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मई विल्सो, शनिवार, दिसम्बर 26, 1992/पौष 5, 1914

No. 52] NEW DELHI, SATURDAY, DECEMBER 26, 1992/PAUSA 5, 1914

इस भाग में भिन्न पृष्ठ संख्या भी जाती है जिससे कि यह वर्ग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—विभाग 3—उप-विभाग (II)
PART II—Section 3—Sub-Section (II)

सरकार स्वतंत्र के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किये गये सांविधिक प्रावेश और अधिसूचनाएं

Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

विधि और स्वाय मंत्रालय

(विधि कार्य विभाग)

(स्थायिक अनुभाग)

सूचना

मई विल्सो, 16 दिसम्बर, 1992

का. आ. 3120—नोटरीज नियम, 1956 के नियम 6
के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी
जाती है कि श्री एन फ्रांसिस सुन्दराराजन एडवोकेट ने
उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन
एक सावेदन इस बात के लिये दिया है कि उसे
रोयापुरम (तमिलनाडू), में व्यवसाय करने के लिये नोटरीज
के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस
सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप
में मेरे पास भेजा जाए।

[सं. 5(227)/92—स्थायिक]
पी.सं. कर्णन, सक्षम प्राधिकारी

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS

(Department of Legal Affairs)

(Judicial Section)

NOTICE

New Delhi, the 16th October, 1992

S.O. 3120.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri N. Francis Soundarajan, Advocate for appointment as a Notary to practise in Royapuram (Tamil Nadu).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(227)/92-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 20 नवम्बर, 1992

का.आ. 3121—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री सुशी ईला चट्टर्जी एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसे कलकत्ता जिला (पश्चिम बंगाल) राज्य में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(257)/92-न्यायिक]

पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 20th November, 1992

S.O. 3121.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules by M/s. Illa Chatterjee, Advocate for appointment as a Notary to practise in Calcutta Distt. (West Bengal).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(257)/92-Judl.]

P. C. KANNAN, Competent Authority.

सूचना

नई दिल्ली, 23 नवम्बर, 1992

का.आ. 3122—नोटरीज नियम, 1956 के नियम, 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री विपिन चन्द्र एस. छत्वा एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसे राजकोट जिला (गुजरात राज्य) में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाये।

[सं. 5(257)/92-न्यायिक]

पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 23rd November, 1992

S.O. 3122.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Vipinchandra S. Chhatra for appointment as a Notary to practise in Rajkot District (Gujarat).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(257)/92-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 3 दिसम्बर, 1992

का.आ. 3123—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री महेश कुमार नटवर लाल अमीन एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसे अहमदाबाद जिला (गुजरात राज्य) में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन से चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(230)/92-न्यायिक]

पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 3rd Decemebr, 1992

S.O. 3123.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Mahesh Kumar Natwarlal Amin, Advocate for appointment as a Notary to practise in Ahmedabad Distt. (Gujarat).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(230)/92-Judl.]

P. C. KANNAN, Competent Authority.

सूचना

नई दिल्ली, 4 दिसम्बर, 1992

का.आ. 3124—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री कैलाश चन्द्र जैन एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसे जिला कालाबाड़ (राजस्थान राज्य) में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाय।

[सं. 5(259)/92-न्यायिक]

पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 4th December, 1992

S.O. 3124.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Kailash Chandra Jain, Advocate for appointment as a Notary to practise in Distt. Jhalawar (Rajasthan).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(259)/92-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 4 दिसम्बर, 1992

का. आ. 3125:—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री टी. एन. कपूर एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसे कीर्ति नगर (दिल्ली संघ क्षेत्र) में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्षा इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाये।

[सं. 5(260)/92-न्यायिक]
पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 4th December, 1992

S.O. 3125.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri T. N. Kapoor, Advocate for appointment as a Notary to practise in Kirti Nagar, i.e. U.T. of Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(260)/92-Judl.]
P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 4 दिसम्बर, 1992

का. आ. 3126:—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री शंकर मोहन धर एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसे 24 परगना विधिन जिला एवं कलकत्ता (प. बंगाल) में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्षा इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाये।

[सं. 5(261)/92-न्यायिक]
पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 4th December, 1992

S.O. 3126.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Sankar Mohan Dhar, Advocate for appointment as a Notary to practise in South 24-Parganas Distt. and Calcutta (West Bengal).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(261)/92-Judl.]
P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 7 दिसम्बर, 1992

का. आ. 3127:—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री राज कुमार सम्पसन एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसे बृहद नोएडा (उत्तर प्रदेश) में व्यवसाय करने के लिये नोटरी के रूप नियुक्ति पर किसी भी प्रकार का आपेक्षा इस सूचना के प्रकाशन से चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाये।

[सं. 5(262)/92-न्यायिक]
पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 7th December, 1992

S.O. 3127.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rule, by Shri Raj Kumar Sampson, Advocate for appointment as a Notary to practise in Greater NOIDA (U.P.).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(262)/92-Judl.]
P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 7 दिसम्बर, 1992

का. आ. 3128:—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि सुश्री पद्मा रानी एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसे पानीपत (हरियाणा) में व्यवसाय करने के लिये नोटरी के रूप नियुक्ति पर किसी भी प्रकार का आपेक्षा इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाये।

[सं. 5(263)/92-न्यायिक]
पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 7th December, 1992

S.O. 3128.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Ms. Padma Rani, Advocate for

appointment as a Notary to practise in Panipat (Haryana).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. 5(263)/92-Judl.]

P. C. KANNAN, Competent Authority
सूचना

नई दिल्ली, 7 दिसम्बर, 1992

का. आ. 3119.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री सिद्धाना संगानी एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के प्रधीन एक आवेदन इस बात के लिये दिया है कि उसे गुलबर्गा जिला (कन्टिक राज्य) में व्यवसाय करने के लिये नोटरी के रूप नियुक्ति पर किसी भी प्रकार का आपेक्षा इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाये।

[सं. 5(264)/92-न्यायिक]
पी.सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 7th December, 1992

S.O. 3129.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Siddana Sangani, Advocate for appointment as a Notary to practise in Gulbarga Distt. (Karnataka).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(264)/92-Judl.]

P. C. KANNAN, Competent Authority

सूचना

नई दिल्ली, 8 दिसम्बर, 1992

का. आ. 3130.—नोटरीज नियम, 1965 के नियम 6 के अनुसार में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री हनुमान सहाय पारेक एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के प्रधीन एक आवेदन इस बात के लिए दिया है कि उसे सांभर लेक (राजस्थान राज्य में) व्यवसाय करने के लिए नोटरी के रूप नियुक्ति पर किसी भी प्रकार का आपेक्षा इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(265)/92-न्यायिक]
पी. सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 8th December, 1992

S.O. 3130.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under

Rule 4 of the said Rules, by Shri Hanuman Sahai Pareek, Advocate for appointment as a Notary to practise in Sambhar Lake (Rajasthan).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(265)/92-Judl.]
P. C. KANNAN, Competent Authority

(न्याय विभाग)

नई दिल्ली, 4 दिसम्बर, 1992

का. आ. 3131.—भारत के संविधान के अनुच्छेद 222 के अनुच्छेद 2 के अनुसरण में राष्ट्रपति निम्न आदेश करते हैं यथा :—

पंजाब एवं हरियाणा उच्च न्यायालय के मुख्य न्यायाधीश न्यायमूर्ति श्री सुरेन्द्र दयाल अग्रवला, जिन्हें इलाहाबाद उच्च न्यायालय से स्थानान्तरित किया गया है, अपने वेतन के अतिरिक्त पंजाब एवं हरियाणा उच्च न्यायालय के मुख्य न्यायाधीश के रूप में अपनी सेवाओं की अवधि के लिए 900/- रुपए (केवल नौ सौ रुपए) प्रति माह की दर से प्रतिपूर्ति भता प्राप्त करने के हकदार होंगे।

[संख्या के 13027/7/92-डेस्क-II]

श्रीमती चीना अद्वा, निदेशक (न्याय)

(Department of Justice)

New Delhi, the 4th December, 1992

S.O. 3131.—In pursuance of clause (2) of article 222 of the Constitution of India, the President hereby makes the following order namely:—

That Shri Justice Sudarshan Dayal Agarwala, Chief Justice of the Punjab and Haryana High Court, who has been transferred from the Allahabad High Court, shall be entitled to receive in addition to his salary, a compensatory allowance at the rate of Rs. 900 (Rupees nine hundred only) per month for the period of his service as Chief Justice of the Punjab and Haryana High Court.

[No. K. 13027/1/92-Desk-II]

Smt. VEENA BRAHMA, Director (Justice)

कार्मिक, सोक शिकायत तथा वेशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 9 दिसम्बर, 1992

का. आ. 3132.—राष्ट्रपति, संविधान के अनुच्छेद 148 की धारा (5) के साथ पठित अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा भारतीय लेखा परीक्षा तथा लेखा विभाग में कार्यरत व्यक्तियों के संबंध में भारत के नियन्त्रक तथा महालेखा परीक्षक से परामर्श के बाद केन्द्रीय सिविल सेवा (आचरण) नियमावली, 1964 में और आगे संशोधन करने के लिए एतद्वारा निम्नलिखित नियम बनाते हैं; प्रथमतः—

1. (1) इन नियमों का नाम केन्द्रीय सिविल सेवा (आचरण) संशोधन नियमावली, 1992 है।

(2) ये नियम भरकारी राजपत्र में इनके प्रकाशन की तारीख से लागू होंगे।

2. केन्द्रीय सिविल सेवा (आचरण) नियमावली, 1964 के नियम 18 में—

(क) टिप्पणी—II में उप-नियम (1) में 2000/- रु. शब्दों और अंकों के स्थान पर, 10,000/- रु. शब्द और अंक प्रतिस्थापित किए जाएंगे।

(ख) स्पष्टीकरण 1 में धारा (1) की उप-धारा (क) में 2000/- रु. शब्दों और अंकों के स्थान पर 10,000/- रु. शब्द और अंक प्रतिस्थापित किए जाएंगे।

टिप्पणी:—केन्द्रीय सिविल सेवा (आचरण) नियमावली, 1964 के निम्नलिखित संशोधन किये गये हैं:—

[सं. 11013/20/91-स्था०(क)]

संजय पाल, उप सचिव

क्र. अधिसूचना संख्या	तारीख	भारत के राजपत्र, भाग 2, खंड 3
उपखंड (ii) में प्रकाशित		
क्र.	तारीख	सं.
1	2	3
4	5	

1. 25/23/68- स्था. (क)	3-2-70	482	14-2-70
2. 25/11/72- स्था. (क)	24-10-72	3643	4-11-72
3. 25/57/64 स्था. (क)	5-1-73	83	13-1-73
4. 11013/12/75- स्था. (क)	13-2-76	846	28-2-76

1	2	3	4	5
5. 25/19/74- स्था. (क)	30-6-76	2563	17-7-76	
6. 11013/19/75- स्था. (क)	6-7-76	2691	24-7-76	
7. 11013/6/75- स्था. (क)	24-11-76	4663	11-12-76	
8. 11013/14/76- स्था. (क)	24-8-77	2859	17-9-77	
9. 11013/3/78- स्था. (क)	20-9-78	2859	30-9-78	
10. 11013/12/78- स्था. (क)	20-12-78	3	8-1-80	
11. 11013/3/80- स्था. (क)	24-4-80	1270	10-5-80	
12. 11013/21/85- स्था. (क)	3-10-85	4812	19-10-75	
13. 11013/6/85- स्था. (क)	21-2-86	935	8-3-86	
14. 11013/11/85- स्था. (क)	7-3-86	1124	22-3-86	
15. 11013/5/86- स्था. (क)	4-9-86	3159	20-9-86	
16. 11013/16/85- स्था. (क)	10-9-76	3280	27-9-86	
17. 11013/1/87- स्था. (क)	27-7-87	1965	8-8-87	
18. 11013/19/87- स्था. (क)	19-4-88			
19. 11013/18/87- स्था. (क)	18-9-90	2562	6-10-92	

MINISTRY OF PERSONNEL, P.G. & PENSIONS

(Department of Personnel & Training)

New Delhi, the 9th December, 1992

S.O. 3132.—In exercise of the powers conferred by the proviso to article 309, read with clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Conduct) Rules, 1964, namely :—

- (1) These rules may be called the Central Civil Services (Conduct) Amendment Rules, 1992.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Civil Services (Conduct) Rules, 1964, in rule 18, :—

(a) in sub-rule (1), in Note II, for the letters and figures "Rs. 2,000/-", the letters and figures "Rs. 10,000/-" shall be substituted;

(b) in Explanation I, in clause(1), in sub-clause (a), for the letters and figures "Rs. 2,000/-", the letters and figures "Rs. 10,000/-" shall be substituted.

[No. 11013/20/91-Estt.(A)]

S.K. PATRA, Dy. Secy.

S. Notification No. No.	Date	Published in the Gazette of India Part II Section 3 Sub-Section (ii)	
		Sr.No.	Date
1. 25/23/68-Estt.(A)	3-02-70	482	14-02-70
2. 25/11/72-Estt.(A)	24-10-72	3643	4-11-72
3. 25/57/64-Estt.(A)	5-01-73	83	13-01-73
4. 11013/12/75-Estt.(A)	13-02-76	846	28-02-76
5. 25/19/74-Estt.(A)	30-06-76	2563	17-07-76
6. 11013/19/75-Estt.(A)	6-07-76	2691	24-07-76
7. 11013/06/75-Ests.(A)	24-11-76	4663	11-12-76
8. 11013/14/76-Ests.(A)	24-08-77	2859	17-09-77
9. 11013/03/78-Ests.(A)	20-09-78	2859	30-09-78
10. 11013/12/78-Ests.(A)	20-12-78	3	6-01-80
11. 11013/03/80-Ests.(A)	24-04-80	1270	10-06-80
12. 11013/21/85-Ests.(A)	3-10-85	4812	19-10-85
13. 11013/06/85-Ests.(A)	22-10-86	935	8-03-86
14. 11013/11/85-Ests.(A)	7-03-86	1124	22-03-86
15. 11013/05/86-Ests.(A)	4-09-86	3159	20-09-86
16. 11013/16/85-Ests.(A)	10-09-86	3280	27-09-86
17. 11013/01/87-Ests.(A)	27-07-87	1965	8-08-84
18. 11013/19/87-Ests.(A)	19-04-88		
19. 11013/18/87-Ests.(A)	18-09-90	2582	6-10-90

वित्त मंत्रालय
(आधिक कार्य विभाग)
(बैंकिंग प्रभाग)

नई दिल्ली, 1 विसम्बर, 1992

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 1st December, 1992

S.O. 3133.—In pursuance of clause (a) of sub-section (1) read with sub-section (4) of section 8 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government, on completion of the term of the 21st December, 1992, of Shri S. Venkitaraman, present Governor, Reserve Bank of India, hereby appoints Dr. C. Rangarajan, presently Member, Planning Commission, as Governor of the Reserve Bank of India, for a term of three years with effect from the 22nd December, 1992, or the date of his taking charge, whichever is later.

[No. 7/26/92-B.O.I]
K. G. GOEL, Director

CENTRAL EXCISE COLLECTORATE

CORRIGENDUM

Nagpur, the 13th November, 1992

S.O. 3134.—In the Notification No. 09/1992 dated 6th November, 1992 issued under C. No. II(3)6/91/Estt, L/24973—95, the date of superannuation of Shri D. U. Pathrabe,

[संख्या एफ 7/26/92-बी. ओ. 1]
के, जी. मोयल, निदेशक

Assistant Collector, Central Excise Group 'A' of Nagpur Collectorate has been shown as 31st August, 1992 in place of 30th September, 1992 in English version. The same may please be read as 30th September, 1992.

[C. No. II(3)6/91/Estt. I] [23916]
HARJINDER SINGH, Dy. Collector (Per. & Vig.)

विदेश मंत्रालय
नई दिल्ली, 13 जुलाई, 1992

का.प्रा. 3135.—राजनयिक कोंसली प्रधिकारी (शपथ एवम् शुल्क) प्रधिनियम 1948 (1948 का 41वा) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का दूतावास डाकार में सहायक श्री एस सी गृहा को 13-7-92 से कोंसली एजेंट का कार्य करने के लिए प्राधिकृत करती है।

[सं.टी. 4330/1/92]
अनीता नायर, उप सचिव

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 13th July, 1992

S.O. 3135.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri S. C. Gauha as Consular Agent in the Embassy of India, Dakar to perform the duties of Consular Agent with effect from 13th July, 1992.

[No. T. 4330/1/92]
ANITA NAYAR, Dy. Secy.

नई दिल्ली, 14 सितम्बर, 1992

का.प्रा. 3136.—राजनयिक कोंसली प्रधिकारी (शपथ एवम् शुल्क) प्रधिनियम 1948 (1948 का 41वा) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का दूतावास जैकाक (थाईलैंड) में सहायक श्री वि. के. आजाद

और श्री जी. एच. प्रसाद को 14-9-92 से कोंसली एजेंट का कार्य करने के लिए प्राधिकृत करती है।

[सं.टी—4330/1/92]
अनीता नायर, उप सचिव

New Delhi, the 14th September, 1992

S.O. 3136.—In pursuance of the Clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri V. K. Azad, Assistant and Shri G. H. Prasad in the Embassy of India, Bangkok to perform the duties of Consular Agent with effect from 14th September, 1992.

[No. T-4330/1/90]
ANITA NAYAR, Dy. Secy.

नई दिल्ली, 30 सितम्बर, 1992

का.प्रा. 3137.—राजनयिक कोंसली प्रधिकारी (शपथ एवम् शुल्क) प्रधिनियम 1948 (1948 का 41वा) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का मुख्य कोंसलावास जहा में सहायक श्री एम. दास को 30-10-92 से कोंसली एजेंट का कार्य करने के लिए प्राधिकृत करती है।

[सं.टी—4330/1/92]
अनीता नायर, उप सचिव

New Delhi, the 30th October, 1992

S.O. 3137.—In pursuance of Clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri Ram Dass, Assistant in the Consulate General of India, Jeddah to perform the duties of Consular Agent with effect from 30th October, 1992.

[No. T-4330/1/90]
ANITA NAYAR, Dy. Secy.

कोयला मंत्रालय

नई दिल्ली, 8 दिसम्बर, 1992

का.प्रा. 3138...: केन्द्रीय सरकार ने, कोयला धारक क्षेत्र (अर्जन और विकास) प्रधिनियम, 1957 (195, का 20) की धारा 4 की उपधारा (1) के अधीन जारी की गई और भारत के राजपत्र, भाग 2, खण्ड 3, उपखण्ड (ii) तारीख 6 अप्रैल, 1991 में प्रकाशित भारत सरकार के तत्कालीन ऊर्जा मंत्रालय (कोयला विभाग) की अधिसूचना सं. का.प्रा. 959 तारीख 10 मार्च, 1991 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में, जिसका माप 1654.00 हेक्टर (लगभग) या 4087.03 एकड़ (लगभग) है, कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी; और उक्त भूमि के सम्बन्ध में उक्त अधिनियम की धारा 1 की उपधारा (1) के अधीन कोई सूचना नहीं दी गई है;

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 6 अप्रैल, 1993 से प्रारम्भ होने वाली एक वर्ष की और अवधि को ऐसी अवधि के रूप में विनिर्दिष्ट करती है जिसके भीतर केन्द्रीय सरकार नीचे की अनुसूची में विनिर्दिष्ट उक्त भूमि या ऐसी भूमि में या उस पर के किसी अधिकार का अर्जन करने के अपने आशय की सूचना दे सकती है:—

प्रनुसूची
 लुरासिया ल्लाक
 चिरीसिरी क्षेत्र
 जिल सरगुजा (मध्य प्रदेश)
 रेखांक संख्यांक एस ई सी एल/बी.एस.पी./
 ए.सी.एम.ई./एस.ई.आर./लैंड/ 31 तारीख
 12 नवम्बर, 1990
 (पूर्वोक्त के लिए अधिसूचित भूमि दर्शाते हुए,)

वन भूमि

क्र.सं.	कम्पार्टमेंट संख्यांक	रेंज	डिवीजन	क्षेत्र हेक्टर में	टिप्पणियां
1.	541 (भाग), 542 (भाग), 543 (भाग), 544 (भाग), 545 (भाग), 546, 547 (भाग), 557 (भाग)	लुरासिया	कोशिया	1654.00	
		कुल क्षेत्र		1654.00 हेक्टर (लगभग) या 4087.03 एकड़ (लगभग)	

सीमा वर्णन :

क-ख-ग-घ- रेखा वन कम्पार्टमेंट 556-547 की सम्मिलित सीमा पर बिन्दु "क" से आरंभ होती है और वन कम्पार्टमेंट संख्यांक 547 की दक्षिणी सीमा से होकर जाती है और वन कम्पार्टमेंट संख्यांक 547, 545 की पश्चिमी सीमा से होकर गुजरती है जो बिन्दु "छ" पर मिलती है।

छ-ज-झ-झ रेखा वन कम्पार्टमेंट संख्यांक 645, 544, 543 से होकर आगे बढ़ती है और बिन्दु "झ" पर मिलती है।

झ-ट रेखा वन कम्पार्टमेंट संख्यांक 543, 542, 541, 557 से होकर जाती है और बिन्दु "ट" पर मिलती है।

ट-ठ-झ-झ : रेखा भागत: वन संख्यांक 557-559 की सम्मिलित सीमा से होकर जाती है फिर कम्पार्टमेंट संख्यांक 557, 547 से होकर जाती है और आरम्भिक बिन्दु "क", पर मिलती है।

[फा.सं. 43015/22/90-एल.एस.उड्डू.]

बी.बी.राव, प्रबंध सचिव

MINISTRY OF COAL
 New Delhi, the 8th December, 1992

S.O.3180.—Whereas by the notification of the Government of India in the then Ministry of Energy (Department of Coal) No. S.O. 959 dated the 18th March, 1991 issued under sub-section (1) of section 4 of the Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957) and published in Part-II, Section 3, Sub-Section (ii) of the Gazette of India, dated the 6th April, 1991, the Central Government gave notice of its intention to prospect for coal in lands measuring 1654.00 hectares (approximately) or 4087.03 acres (approximately) in the locality specified in the Schedule appended thereto;

And whereas in respect of the said lands, no notice under sub-section (1) of section 7 of the said Act has been given;

Now, therefore, in exercise of the powers conferred by sub-section(1) of section 7 of the said Act, the Central Government hereby specifies a further period of one year commencing from the 6th April, 1993, as the period within which the Central Government may give notice of its intention to acquire the said lands or any rights in or over such lands, as specified in the Schedule below:—

SCHEDULE

KHURASIA BLOCK

CHIRIMIRI AREA

DISTRICT—SURGUJA (MADHYA PRADESH)

Plan number SICL/BSP/ACME/LER, LAND/31

dated 12th November, 1993

(Showing the lands notified for prospecting)

Forest Land

Sl. No.	Compartment Number	Range	Division	Area in Hectares	Remarks
1.	541(part), 542(part), 543(part), 544(part), 545(part), 546, 547(part).	Khurasia	Korea	1634.00	
Total				1634.00 hectares (approximately) OR 4087.03 acres (approximately)	

BOUNDARY DESCRIPTION

A—B—C—D—E—F—G.

Line starts from point 'A' on the common forest compartment boundary of 556-547, and passes through southern boundary of forest compartment number 547 then through western boundary of forest compartment number 547, 545 and meets at point 'G'

G—H—I—J.

Line proceeds through forest compartment numbers 545, 544, 543 and meets at point 'J'.

J—K.

Line passes through forest compartment number 543, 542, 541, 557 and meets at point 'K'.

K—L—M—A.

Line passes partly along the common boundary of forest compartment number 557-559 then through forest compartment number 557, 547 and meets at the starting point 'A'.

[No. 43015/22/90-LSW]

B.B. RAO, Under Secy.

पुस्ति पत्र

नई दिल्ली, 8 दिसम्बर, 1993

का. आ. 3139.—भारत के राजपत्र भाग 2, खंड 3, उपखंड (ii) में तारीख 11 जुलाई, 1992 के पृष्ठ 2980 से 2997 पर प्रकाशित भारत सरकार के कोंपनी मंत्रालय की अधिसूचना का. आ. रो. 1824 तारीख 4 जून, 1992 में :-

पृष्ठ 2987 पर अनुसूची में :-

(1) कम संख्या 9 में स्तम्भ "ध्रौक हैक्टरों में "362.36" के स्थान पर "862.36" पढ़ें।

(2) कम संख्या 11 में स्तम्भ टिप्पणियों में "पूरा" पढ़ें।

पृष्ठ 2983 पर :-

अनुसूची में कम संख्या 15 में स्तम्भ "ग्राम का नाम" में "वैगांधी नौकरानी" के स्थान पर "वैगांधी शोकरानी" पढ़ें।

[मे. 43015/2/92-एल.एस.उत्त्य.]
बी.धी. राव, सचिव समिय

CORRIGENDUM

New Delhi, the 8th December, 1992

S.O. 3139.—In the notification of the Government of India, Ministry of Coal number S.O. 1824, dated the 4th June, 1992, published at pages 2987 to 2990 of the Gazette of India, Part-II, Section-3, Sub-Section (ii) dated the 11th July, 1992, at page 2989 in the Schedule in serial number 19 in column heading "Area in hectares" for "144.90" read "144.96".

[File No. 43015/2/92-LSW]

B. B. RAO, Under Secy.

पुस्ति पत्र

नई दिल्ली, 8 दिसम्बर, 1993

का. आ. 3140.—भारत के राजपत्र भाग II, खंड 3, उपखंड (ii) में तारीख 11 जुलाई, 1992 का पृष्ठ 2995 से 2098 पर प्रकाशित भारत सरकार के कोंपनी मंत्रालय की अधिसूचना का. आ. 1827, तारीख 5 जून, 1992 में :-

in the erstwhile Ministry of Health, No. S.O. 138, dated the 9th January, 1969, namely :—

In the said notification under the heading "Elected under clause (b) of sub-section (1) of section 3",—

(a) for serial number 27 and the entries relating thereto, the following serial number and entries shall be substituted, namely :—

"27. Prof. S. K. Bapat,
Principal,
Motilal Nehru Medical College,
Aligarh."

Aligarh
University

(b) after serial number 70 and the entries relating thereto, the following serial number and entries shall be inserted, namely :—

"71. Dr. B. P. Dubey,
Head of Department of
Forensic Medicine,
GMC, Bhopal."

Barkatullah
Vishwavidyalaya

[No. V 11013/2/92 ME(UGC)]

R VIJAYAKUMARI, Desk Officer

दस्तावेज और प्रसारण मंत्रालय

दस्तावेज, 1 दिसंबर, 1992

का.आ. 3143.—दस्तावेज (प्रसारण) नियम, 1950 के लिये 3 के साथ पड़िया व्यावसाय अधिनियम, 1952 (1952 का 37) के अन्तर्गत अधिकारी वाले प्रयोग करते हुए, केन्द्र सरकार अथवा सामन्त का बेल्ट्स फिल्म प्रसारण वाई एंड एफज के द्वारा में, उत्तराखण्ड में, 4 नियम, 1993 वे 3 वर्षों के अन्तर्गत या अप्रैल आदेशों के द्वारा या, जो भी पहले ही, भवित्व करते हैं।

[का. सं 809/5/91-एक(३)]
दस्तावेज, 24 नवंबर, 1992

MINISTRY OF INFORMATION & BROADCASTING

New Delhi, the 11th November, 1992

S.O. 3143.—In exercise of the powers conferred by sub-section (1) of section 3 of the Cinematograph Act, 1952 (37 of 1952) read with rule 3 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint Shri Shakti Samanta as Chairman, Central Board of Film Certification in an honorary capacity for a period of 3 years with effect from 4th September, 1992 or until further orders, whichever is earlier.

[File No. 809/8/91-F(C)]

S. LAKSHMI NARAYANAN, Jr. Secy.

दस्तावेज, 13 नवंबर, 1992

का.आ. 3144.—दस्तावेज (प्रसारण करण) नियम, 1983 के लिये 3 के साथ पड़िया व्यावसाय अधिनियम, 1952 (1952 का 37) की धारा 5 के उल्लंघन (1) द्वारा प्रयत्न विवरी का अवधारणा कुप्रीयता, यद्यपि दर नियम 10-4-9, 14-1-9, 20-2-8-91 के अधिग्रहण नंदा 8/4/11/90-एक (३) के द्रष्टव्य ने केन्द्र या दस्तावेज भी नीतायां दर्शन की तरह वाई एफज व्यावसाय, उत्तराखण्ड, दस्तावेज-110005 और दस्तावेज भी नीतायां दर्शन, प्रसारण-प्रसारण, दारा मुम्हरी लैन, दस्तावेज-110002 का सहायता प्रसारण से जो अपने आदेशों द्वारा दिया गया फिल्म प्रसारण करण वाई के किसी दस्तावेज द्वारा दिया गया नियम करते हैं।

[644/33/3.2/1/1-7/8 (T)]

[T-7/8/1992/T/3/1/1-7/8 (T)]

New Delhi, the 13th November, 1992

S.O. 3144.—In exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983 and in continuation of this Ministry's Notifications No. 814/11/90-F(C) dated 30th September, 1991, 24th January, 1992 and 24th August, 1992, the Central Government is pleased to appoint Shri Naushad Ali, 163 Joga Bai Ursi Apartments, Jamia Nagar, New Delhi-110025 and Ms. Rashmi Kapoor, Aiwan-e-Ghalib, Mata Sundari Lane, New Delhi-110002 as members of the Delhi Advisory Panel of the Central Board of Film Certification with immediate effect and until further orders.

[File No. 814/11/90 F(C)]
S. LAKSHMI NARAYANAN, Jr. Secy.

धर्म संस्कारण

दस्तावेज, 30 नवंबर, 1992

का.आ. 3145.—आदिगेह नियम वोल्यूम 1947 (1947 का ना. 14) की धारा 17 के अनुरूप अंकेश्वर महाराजा द्वारा दिया गया विवरणी के प्रत्येक के व्यवहारिकों वाले उत्तराखण्ड में विविध व्रीडियां दियाएं गयीं गरमाएं जाएंगी जहां विवरणी आदानप्रदान के अन्तर्गत वाले प्रजालोग उत्तराखण्ड के द्वारा हैं, जो उन्हीं द्वारा को 24-11-92 को प्राप्त हुया था।

[साधा एवं 22012/199/92 - भारत द्वारा (गो - II)]

भारत द्वारा, दस्तक प्रसिद्धियां

MINISTRY OF LABOUR

New Delhi, the 20th November, 1992

S.O. 3145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Damagoria Colliery and their workmen, which was received by the Central Government on 24-11-92.

[No. I-22012/199/92-IR(C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 42/92

PRESENT:

Shri N. K. Saha, Presiding Officer.

PARTIES:

Employers in relation to the Management of Damagoria Colliery.

AND

Their Workmen.

APPEARANCES:

For the Employers—Shri N. P. Singh, Deputy Personnel Manager.

For the Workmen—None.

INDUSTRY: Coal.

STATE: West Bengal.

Dated, the 10th November, 1992

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication videlicet Ministry's Order No. I-22012/199/92-IR (C-II) dated the 12th October, 1992

SCHEDULE

"Whether the action of the Management of Damagoria Colliery in unilaterally and unjustly issuing transfer order to Shri Anjor Singh and 36 others is justified? If not, to what relief is the concerned workmen entitled to?"

2. Today (4-11-92) Sri N. P. Singh, Dy. Personnel Manager of Damagoria Colliery is present for the management with a letter of authority. None appears for the union and no step is taken by the union for filing written statement.

3. This reference was received by this Tribunal on 19th October, 1992. Then regd. notice was sent to both the parties fixing 4-11-92 for filing written statement. The regd. notice was served both upon the management and upon the union on 24-10-92. In response to that regd. notice the management has sent its representative but the union has not turned up on 4-11-92 in spite of service of notice to them. So it seems to me that the union is not interested to contest the case. As such I have no other alternative but to pass a no dispute award. Accordingly a no dispute award is passed in this case.

N. K. SAHA, Presiding Officer

महं दिल्ली, 30 नवम्बर, 1992

का. ना. 3146.—आधिकारिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुरूप में, भौतिक सरकार कोलाडरी आक दीरासे टाटा आइरन एंड स्टील के लि. के प्रबन्धालय के संबंध निवोजनों और उनके कर्मकारों के बीच, शनुंद में निर्विष्ट आधिकारिक विवाद में केन्द्रीय सरकार आधिकारिक अधिकारण, घनयाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार यो 24-11-92 को प्राप्त हुआ था।

[संख्या एल - 20012/170/86- थी - III (ए)]

राजा लाल, एस्ट्रो अधिकारी

New Delhi, the 30th November, 1992

S.O. 3146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Collieries of M/s. Tata Iron and Steel Co. Ltd. and their workmen, which was received by the Central Government on 24-11-1992.

[No. L-20012/170/86-DIII(A)]

RAJA LAL, Desk Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 328 of 1986

PARTIES :

Employers in relation to the management of Collieries of M/s. Tata Iron and Steel Co. Ltd.

AND

Their Workmen.

APPEARANCES :

On behalf of the workmen : Shri R. S. Murthy, Advocate.

On behalf of the employers : Shri D. K. Dayal and Shri B. Joshi, Advocate.

STATE : Bihar,

Dhanbad, the 11th November, 1992

INDUSTRY : Coal.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (170)/86-D.III(A), dated, the 19th September, 1986 :

SCHEDULE

"Whether the action of the management of the Collieries of M/s. Tata Iron and Steel Co. Ltd. in not considering (1) Overmen having Diploma with 3 years of service or Overmen without Diploma having 5 years of service for promotion as Senior Overmen and (2) Mining Sirdars with 10 years of service for promotion as Safety Assistant/Production Assistant/Stowing Incharge etc., is justified? If not, to what relief are the concerned workmen entitled?"

2. The concerned workmen in this reference are Mining Sirdars and Overmen of the collieries of M/s. Tisco. Ltd. who are also the members of Tisco Mining Supervisor Progressive Front a registered trade union. The concerned workmen have placed their grievance through the W.S. filed in this reference whereby it has been stated that the Central Government constituted a committee for the purpose of collective bargaining between the employers in the Coal Industry and their workmen to look into the matters relating to wages service conditions, benefits and other facilities etc. The said committee was called Joint Bipartite Committee for the Coal Industry and Tata Iron and Steel Company Limited herein-after referred as Tisco was one of the representative of the committee. Other Central Trade Union like INTUC, AITUC, HMS, BHS and CTIU were also the representative of the committee. The said committee brought about 3 agreements they were called the NCWA-I, II and III. It may be noted that only the said three agreements had been brought into existence by the time the workmen filed their W.S. in 1986. The NCWA-III was to come into force from 1-1-83 and it was for a period of 4 years i.e. till 30-12-86. Now NCWA-IV has come into existence and made effective from 1-1-87.

3. It was stated that NCWA-II and III constituted several committees with different assignments and one of such it was the committee of promotion policy which laid down promotion rules for a large number of category of workers. This promotion rules were circulated to all Coal Companies including the Tisco and the same were binding on them. It was contended that the management of Tisco have violated and has been violating some of the rules of promotion policy committee and had indulged in unfair labour practice.

4. On the basis of the decision of the promotion policy committee the member secretary, JBCCI circulated a cadre scheme for Mining Supervisor employees vide Implementation Instruction No. 43 dated 22-6-80 which provides as follows :

(a) A Short Fitter/Mining Sirdar in the NCWA-II Pay Scale of Rs. 572—1008 i.e. in Technical and Supervisory Grade would be promoted to the post of Safety Assistant, Production Asstt. and Stowing Incharge with a higher starting pay of Rs. 775 in the same pay scale subject to his possessing Mining Sirdar's Certificate of competency issued by DGMS Gas testing certificate and valid First Aid Certificate provided he has put it a minimum of 10 years working experience as Mining Sirdar and the promotion would be through Departmental Promotion Committee.

(b) An Overman in the Technical and Supervisory Grade 'B' and in NCWA-II pay scale of Rs. 640—1150 and possessing the Overman's certificate of Competency, Gas Testing Certificate and Valid First Aid Certificate and who has worked 3 years as Overman would be promoted as Sr. Overman/Head Overman in Technical and Supervisory Grade 'A' i.e. NCWA-II pay scale of Rs. 722—1278 through Departmental Promotion Committee on merit-cum-seniority basis.

5. The management did not implement the said promotion rules and contrary to that they made some selection through

interview just to accommodate their few favourites. The union strongly protested against the illegal acts of the management but without any result. The management on the other hand placed some favourite Mining Sirdars to the post of Sr. Mining Sirdars by granting one more increment, the union being aggrieved raised industrial dispute but in the meantime NCWA-III came into force whereby the pay scale of the Mining Sirdar, Overman and Sr. Overman were revised with effect from 1-1-83. The promotion policy committee again revised the promotion rules and in modification of previous Implementation Instruction No. 33 dated 22-6-80 issued another Implementation Instruction No. 45 dated 28-6-85. According to the latter instruction a Mining Sirdar possessing Mining Sirdar certificate having 10 years of working experience as Mining Sirdar will be promoted to the post of Safety Assistant/Production Assistant/Stowing Incharge through D.P.C. on sub-area basis on the basis of sanctioned vacancy. Again the Overman to be promoted to the post of Sr. Overman/Head Overman after 5 years of service in case of overman certificate holders and 3 years in case of Diploma holders through D.P.C. on merit-cum-seniority basis. This implied instruction has also not been followed and implemented by the management. The management slept over the matter and refused to create requisite number of post as aforesaid. The conciliation before the RLC(C), Dhanbad also ended in failure giving rise to the present reference. In this way the workmen demanded that all the Mining Sirdars with 10 years of experience be promoted to the post of Safety Assistant/Production Assistant or Stowing Incharge in Technical and Supervisory Grade-B with retrospective effect from 22-6-80. Secondly to promote all the Overman with 5 years experience in case of Overman certificate holders and 3 years certificate in case of diploma holder with retrospective effect from 22nd June, 1980 and all the promotions to be made through D.P.C. committee only and not by interview.

6. The management filed W.S. denying the claim of the concerned workman. It was stated that the sponsoring union has not been recognised by the management and hence no locus standi to raise industrial dispute on common issue involving general principles of promotion applicable to different categories of employees. It was urged that the promotion is the function of the management and the workmen a matter of right cannot claim promotion. The Mining Sirdar and the Overmen are supervisory personnel and they are not workmen within the meaning of Section 2(s) of the I.D. Act. The management has stated in para-6 of the W.S. that it has formulated its own promotion policy in respect of supervisory personnel and other categories of the workmen in consultation with the R.C.M.S. the recognised union. It was asserted that the promotion policy applicable to the collieries of the management are different from those applicable in public sector and larger organisation. Thus promotion policy formulated by JBCCI is applicable in all the collieries of M/s. CII, whereas the same are not applicable automatically and in the same form in the collieries of the concerned management. It was stated that the promotion policy cannot be the same for the employees of public and private sector. In respect of public sector employees seniority is given more weightage whereas in case of private sector merit is the prime consideration.

7. In para 10 of the W.S. it is stated that NCWAs are bipartite settlement and the promotion policy formulated by the JBCCI binds the parties to the settlement. It was contended that the promotion policy in respect of Mining Supervisory personnel was not signed by the representative of the management. The modified promotion policy framed by the management have been signed by the management and the representative of the recognised union. RCMS is the member of the JBCCI and true representative of all the workmen but the sponsoring union is not a member and thus has no locus standi to challenge the settlement on promotion policies duly accepted by the management and the recognised union.

8. Vide para-13 it is stated that according to promotion scheme of the management one overman with diploma in mining can be promoted directly as Sr. Overman irrespective of the number of years of experience as Overman. Similarly Overman without any diploma is required to possess minimum 5 years experience for promotion to the post of Sr. Overman.

9. As regards the Mining Sirdar the union demanded that they should be promoted to the post of Safety Assistant etc. after 10 years of experience but according to the management this demand cannot be accepted for there is no such post with the management. On the other hand the management has created post of Sr. Mining Sirdar and one is required only 5 years experience for promotion to the post of Sr. Mining Sirdar. In this way the management has to say that the promotional scheme of the management is more generous, progressive and beneficial to the workmen.

10. The management further stated that selection to the post of Sr. Overman and Sr. Mining Sirdars are made on the basis of performance in the interview and past service records. The management has got no scheme for promotion merely on the basis of length of service while continuing on the same post and doing the same duties. It will be incorrect to suggest that the promotion rules adopted by the management are to show favouritism rather it has been framed with a view to reward for merit sincerity and honesty.

11. The point for consideration is whether the demand of the union that the management of Tisco should implement the implementation instruction No. 33 as modified under Implementation Instruction No. 45 dated 28-6-1985 with retrospective effect is proper and justified and if so how and in what manner it can be directed.

12. The first question raised on behalf of the management was that the concerned workmen are not the workmen within the meaning of Section 2(s) of the I. D. Act. "Workman" has been defined under Section 2(s) of the I. D. Act. which means any person employed in any industry to do any manual skilled, unskilled technical, operational, electrical and supervisory work for hire or reward. This means even the supervisors are the workmen but it will not include any such person who being employed in supervisory capacity draws wages exceeding Rs. 1600/- per mensem. In the instant reference the concerned workmen are overmen and the Mining Sirdars. The duties and functions of these persons have been spelt out under Section 43 and 44 of the Coal Mines Regulation, 1957. The description of their duties does not show that their function are purely supervisory in nature. They are themselves to see and at times to get the work done for safe working under the Mines. Even if they are supervisors there is nothing to show that they having been drawing wages exceeding Rs. 1600/- per month and part from that this limit of wages per mensem was fixed much earlier and since then wages structure has been revised several times.

13. It may be noted that after 5 years of operation of Wage Board Recommendation the then Ministry of Steel and Mines constituted a Joint Bipartite Wage Negotiation Committee on 14-8-1973. The committee comprised the representative of the members drawn from INTUC, AITUC, HMS, CITU and equal number of representative from the Coal producing companies. After prolonged deliberation the NCWA was signed on 11-12-1974 and it became effective for 4 years from 1-1-1975. This NCWA replaced the wage structure and other condition of service recommended the Central Wage Board Recommendation for Coal Mining Industry. This was brought into existence for betterment of the service condition of the workers engaged in coal industry. This means it was meant only for the workmen engaged in Coal mines. While dealing with the scope and coverage under Chapter I it provides as follows :—

"CHAPTER I

SCOPE AND COVERAGE

1.1 This Agreement shall cover all categories of employees who are covered by the recommendations of the Central Wage Board for the Coal Mining Industry and who have been given the interim wage increase of Rs. 39/- per month or Rs. 1.50 per day in pursuance of the Agreement dated 19-11-1973."

14. In this context now let us see the recommendation of the Central Wage Board for the Coal Mining Industry. Chapter-IV deals with the scope of enquiry of the board. Para-1 reads as follows :—

The first item of the terms of reference of the Board is :—

"To determine the categories of employees (manual, clerical, supervisory, etc) who should be brought within the scope of the proposed wage fixation."

Para 2 of the said chapter IV reads as follows :—

"At the very first meeting of the Board held in Calcutta on 10th September, 1962, it was unanimously decided that the scope of the terms of reference to the Board would cover all employees in the Coal mining industry who fall within the definition of the term "workman," in Section 2(a) of the Industrial Disputes Act, 1947 (Act XIV of 1947) including miners' and other sirdars."

Now from the provision aforesaid it is crystal clear that the workmen included miners and other sirdars and they were all covered by NCWA. Again under Chapter VIII of the Central Wage Board we find the wage structure of Technical and Supervisory Staff including Head Overman Sr. Overman, Overman Incharge and Mining Sirdars Class I, II and III.

15. Since after first NCWA-I three more have already been brought into force. NCWA-II Chapter I clause 1.1. says that the agreement shall cover all categories of employees who are covered under NCWA-I. Similarly NCWA-III clause 1.3 provides that this agreement was covered all categories of employees in the Coal Industry who have been covered by NCWA-I and II. NCWA-IV Chapter-V Clause 1.2 also makes the same provision and stated that this agreement shall cover all categories of employees in the coal industry who have been covered by NCWA-I, II and III. In this way in all 4 NCWA the Overman and Mining Sirdar have been shown and described as workman. In this way I have to hold that the concerned workmen are the workmen within the meaning of Section 2(s) of the I. D. Act.

16. The memorandum of agreement of NCWA-II was signed on 11-8-1979 and Shri Rushi H. Modi, the Managing Director had signed on behalf of the Tisco. Similarly the memorandum of agreement of NCWA-III was signed on 11-11-1983 and Shri K. C. Mehera, Vice President (C) had signed on behalf of Tisco. Chapter XII deals with the implementation of NCWA-II and para 12.1.1 says that the agreement including wage structure shall come into force and will be implemented with effect from 1.1.79 unless otherwise specified. Again para 12.1.3 shows that the management and employee's representative agreed that the terms of these agreement will be implemented faithfully and in a spirit of good will by the management and the union. Vide para 12.6.1 it was agreed to constitute Promotion Policy committee. It was provided that a bipartite committee constituting the representative of the workers and the management will examine the existing promotion policy obtaining in different coal companies, if any, and formulate uniform guideline for channels of promotion etc. Exactly the same provision can be found under para 12.1.1, 12.1.3 and 12.4.2 of NCWA-III. This means uniform guidelines were to be formulated in the channels of promotion of the employees of all the coal companies. The management, however, stated that it has nowhere agreed to accept the promotion policy framed by JBCCI in respect of Nationalised collieries automatically and in the same form. Perhaps the said promotion policy does nowhere sneak that it will or will not be applicable in the nationalised collieries. However, the management kept nowhere any reservation in NCWAs for separate promotion policy. Further during the course of argument it was pointed by the learned counsel for the management that at the foot notes of every cadre scheme the Tisco and Tisco had agreed to implement subject to modification to suit their local conditions. Certainly such type of reservation was kept with respect to the cadre scheme for ministerial staff accounts personnel and quality control department but no such reservation was made with regards to Mining supervisor employees. There is no foot note that the management of Tisco will modify to suit the local condition.

16. The JBCCI after rectification of the decision taken by promotion policy committee circulated in all concern inclusive Shri Rushi Modi, the Managing Director of Tisco

with a request to implement the same. Admittedly it was a bipartite settlement but it is equally true that the management was one of the members of JBCCI and any decision taken by it will be binding upon the concerned management. It was circulated vide Implementation Instruction No. 33 dated 22-6-80 whereby and wherefrom it was provided for creation of the post of Safety Assistant, Production Assistant and Sowing Incharge. However, the management stated that there was no such frivolous post in the management. I think the creation of this post should not and cannot be branded as frivolous because these are the posts which have been provided under the cadre scheme of the JBCCI. As per evidence of the witnesses for the management such type of work exist and they are done by the Overman and in such view of the matter perhaps this cannot be called a frivolous one. Actually the Court cannot direct the management for creation of such posts but the workers are definitely entitled for the benefits as provided under the cadre scheme. It provides for higher starting pay in the pay scale of Rs. 575-1008 in the Technical and Supervisor Grade-C. It further lays down that a Mining Sirdar with 10 years of experience will be eligible for promotion to the said post and that the promotion will be through D. P. C. on sub-area basis and on the basis of sanctioned vacancy. This further suggests that the vacancies have to be sanctioned and in such view of the matter perhaps the Management cannot be permitted to say that such posts do not exist. There was no provision for any interview and the eligible candidate have to be screened out on the basis of their length of service and past services records. The Implementation Instruction has been marked Ext. M-1 equal to Ext. W-14. It also provides that an Overman with 5 years of experience will be promoted through the D. P. C. to the post of Sr. Overman on the basis of merit-cum-seniority in technical and supervisory Grade-A in the pay scale of Rs. 722-1278 provided the vacancy is available at area level. This was not implemented by the management of Tisco. The management also took the plea that in the matter of promotion of the standard and criteria for public sector organisation are different from private sector. I think the plea being not healthy is not tenable.

17. However, we find that the management of Tisco had addressed a note of decent to the member Secretary, JBCCI expressing its certain difficulties in the implementation of cadre scheme in toto. It agreed to implement the same with modification to suit the local condition, and that too in consultation with the union. The latter is Ext. M-2. In this connection we may refer to the evidence of MW-1. He stated that Ext. M-2 was delivered to the member secretary, JBCCI and the management had received reply of that letter from the member secretary. He admitted that the said reply of the members secretary JBCCI has not been filed. Thus we have nothing to show as to whether the member Secretary agreed to the proposal of the management to implement the cadre scheme with modification or not. The management framed its own cadre scheme in consultation with RCMS for Mining Supervisor personnel which provided interview at every stage of promotion either from Mining Sirdar to Sr. Mining Sirdar or overman to Sr. Overman.

18. It may be mentioned here that Implementation Instruction No. 33 was modified vide implementation instruction No. 45 dt. 28-6-85 but that was also not implemented by the management. According to the later instruction the pay scale of all supervisory personnel changed. As regards the Mining Sirdars the conditions remained almost the same. A Mining Sirdar with 10 years of experience will be promoted as Safety Assistant, Production Assistant and Sowing Incharge in Technical and Supervisory Grade-C but in the case of Overman there was a change not only in the pay scale but also in conditions. As per later instruction an Overman must have worked for more than 5 years to get promotion as Sr. Overman. There was a further advantage to the effect that in case of diploma holders an Overman require only 3 years of experience for his promotion to the post of Sr. Overman. However, in Overman's case promotion was through D.P.C. on instruction-cum-seniority basis. Thus we find that under the later instruction merit was given the first priority while selecting a candidate for the post of Sr. Overman. Again we find that the merit has to be judged on the basis of past service records as well as by interview. So the element of interview of just-

ing the merit cannot be given a go-by. Now in comparison to the cadre scheme of the management we find that the pay scale is the same but the condition of interview is there at every stage. Apart from that an Overman must have atleast 10 years of experience to get promotion as Sr. Overman and hence the difference. In case of Mining Sirdar though the experience required is only for 5 years to get a promotion as Sr. Mining Sirdar but a candidate will have to face interview. Again with the management there is no post of Safety Assistant, Production Assistant and Stowing Incharge. Of course there is post of Sr. Mining Sirdar but the pay scale of Safety Assistant is better than Sr. Mining Sirdar. As regards the interview it is stated by the workmen that the said provision has been made to select and accomodate favourite of the management. However, on the other hand the management has to say that more competent hands will be selected by interview. In my opinion the contentions raised by the parties can be interpreted in both the ways.

19. In para 10 of the W.S. filed by the management it has been stated that the sponsoring union was not a member of the JBCCI and therefore it has got no locus standi to challenge the settlement on promotion policy arrived at between the management and the recognised union. The alleged settlement is Ext. M-3 dated 22-6-84. However this document has been branded as forged and fabricated for it does not find any reference in the W.S. of the management. In the evidence MW-1 stated that the management of Tisco has adopted its own cadre scheme for the supervisory personnel in preference to the circular of JBCCI. The witness stated in cross-examination that he was not aware if no departure could be made either by the union or any coal mine from the decision of the JBCCI. According to him it was not the policy of Tisco to deprive the workmen of the advantage JBCCI decision. In the same breath he further stated that they do modify to suit their local condition. This point has already been answered that no such reservation was noted in case of supervisory personnel and apart from that no special local condition has been canvassed.

20. Ext. M-20 is the minutes of cadre scheme committee meeting held on 27-2-91 in the conference hall of the Director's office, Tisco, Jamadoba. Neither Ext. M-3 nor Ext. M-20 speak even a word that the cadre scheme was in modification of cadre scheme of JBCCI (Ext. M-1). According to the management the cadre scheme was a settlement arrived at between the management and the recognised union. The learned counsel for the workmen submitted at this stage that it was not at all a settlement in the eye of law. He explained that the words settlement has been defined under section 2(n) of the I. D. Act wherein more emphasis has been given on the agreement being signed by the parties in such manner as may be prescribed and the copies be sent to the various authorities. The manner of signing the settlement has been prescribed under rule 58 of Industrial Disputes Act (Central Rules), 1957, and as per that rules settlement should be in Form II and it should be signed by the officers of the management and the office bearers of the union as specified therein and the copies have to be sent to various authorities as named therein. Ext. M-20 does not show that the necessary requirement were complied with. In this view of the matter the contention raised by the learned counsel for the workmen have to be appreciated and sustained.

21. Reference was made to Ext. M-18 and M-17 also. Ext. M-18 is the record notes of decision taken at the 12th meeting of the Promotion Policy Committee of JBCCI held on 5-12-80. It will disclose that the JBCCI was not agreeable for any deviation in the promotion policy to be taken by any employer. Ext. M-17 will show that the management was really desirous to modify the cadre scheme in respect of other categories of the workmen and not the supervisory personnel. That was a letter dated 16-12-80 addressed to the Dy. Divisional Manager (A), Jamadoba by Shri L. H. Parvatiyar, Chief Personnel Manager (C) along with the letter enclosing a copy of Ext. M-18. Ext. M-15 and M-16 are also the letters about the record notes of discussion at the 9th meeting of promotion policy committee held on 22-8-80. I find that the representative of the management of Tisco and Tisco were adamant to bring modification in the cadre scheme of JBCCI. But the promotion policy committee of JBCCI took the view that it was not within its scope to agree for any stipulation as suggested by the management. There is a reference of other categories of employees but we find not even a whisper about the supervisory personnel. Ext. M-14 is a letter dated 13-8-90

to the promotion policy committee by Shri Parvatiyar taking the same stand of the management. Thus we find that the management has always been taking a stand that the cadre scheme unanimously finalised or to be finalised in future by the promotion policy committee was not possible to be implemented in toto and the management wanted to implement it with certain modification wherever required. From this document it is further gathered that the promotion policy committee of the JBCCI never agreed to such modification. Ext. M-13 is also a note even by Shri Parvatiyar to the Dy. General Manager, Jamadoba giving out reasons for not implementing the cadre scheme of JBCCI. Shri Lala Hari Mohan Parvatiyar has been examined as MW-4. He was one of the members of the promotion policy committee of JBCCI and Shri B. Prasad had represented the Tco. The witness has proved the document which has been marked Ext. M-13 to M-20. In the year 1980-81, and 1982 he had attended the meeting of the promotion policy committee as representative of Tisco. He has defended Tisco, in not implementing the cadre scheme in toto and one of the important reasons was local condition as stated by him. By local condition he meant the history of place, how the industrial relations remained and how the workmen reacted to the management policy etc. It was pointed out by the learned counsel for the concerned workmen that the collieries of Tisco are located and surrounded by the collieries of BCCL. The West Bokaro Collieries in the district of Hazaribagh is surrounded by the collieries of BCCL and so there was no question of any change in the local condition. The witness stated that the trade union participating in the promotion policy committee did not agree to the modified promotion policy of Tisco. In this way we find that the Tisco had no reasonable and sufficient cause for not implementing the cadre scheme of the promotion policy committee of the JBCCI. Lastly the witness stated that in the matter pending before JBCCI they do tell the union that the JBCCI decision should be awaited. This seems that the management of Tisco in his own evidence seems to have taken inconsistent stand while not implementing the promotion policy of the JBCCI.

22. MW-2 has proved some documents which are marked Ext. M-5 to M-8 series. Ext. M-5 and M-8 are the letters dated 24-1-85 issued to the Manager, Operation and Manager, U.G. collieries of West Bokaro Colliery for implementation of cadre scheme of the management. Ext. M-7 is the list of Mining Sirdars and Overmen who are said to have been promoted in pursuance of the cadre scheme of the management. It has been suggested to the witness that none of the workmen of Ext. M-7 accepted the promotion as Sr. Mining Sirdars and Sr. Overman and they all have raised the present industrial dispute. This suggestion has been denied but in the circumstances of the case it was necessary on the part of the management to examine few of the workmen who abided by the promotional scheme of the management. No such workman has been examined actually leading us to draw an inference that all supervisory personnel have joined in this reference. The witness admitted that prior to 1985 there was no Sr. Mining Sirdar. He has displayed his ignorance that there was only one Sr. Overman in West Bokaro prior to 1985. I think the witness has indulged in utter falsehood by disclosing his ignorance. It was contended that the height of callousness of the management can be judged that prior to 1985 when the cadre scheme of the management was formulated there was no promotion to the post either of Sr. Mining Sirdar or Sr. Overman. Ext. M-9 is the photo copy of the minutes of meeting between the union and the management held on 2-2-83 at Director's office Jamadoba.

23. MW-3 is Sr. Stenographer placed in Technical and Supervisory Grade B. He has proved some letters which have been marked Ext. M-9 to M-12. However, he denied to accept the wages and other benefits less than as provided under NCWA. This means that this witness accepted the policy of NCWA with regards to promotion and other benefits. The letters proved by this witness are with regards to cadre scheme of the management which were issued to different concerned authorities.

24. MW-5 has come to say that in every respect the cadre scheme of Tisco is more beneficial than the cadre scheme of JBCCI. He explained that in Tisco, there is no post of Safety Assistant etc. He further stated that an Overman discharges the duties of Safety Assistant, Production Assistant and Stowing Assistant/Incharge. I think this is sufficient enough to show and prove that there is work for these assistants but no such posts exist. Such functions are discharged by the

Overman. There can be no earthly reason for not keeping these posts when the work is available. It is well and good if this work is done by Overman, the more competent hands.

25. Now let us see how the Mining Sirdar gets the post of Overman in Tisco. According to cadre scheme one must possess Overmanship certificate issued by D.G.M.S. The scale of Overman is Rs. 810-46-1178-51-1586. The witness stated that all the Mining Sirdars having Overman certificate have been promoted as Overman. But in the cadre scheme of JBCCI only Mining Sirdars certificate + 10 years experience are required for promotion to the post of Safety Assistant, Production Assistant, Stowing Incharge in the pay scale of Rs. 810-46-1178-51-1586. In this way we find that the pay scale of Overman and that of the Safety Assistant are equal. The witness admitted that there may be Mining Sirdar having more than 10 years experience who have not obtained overmanship certificate to qualify them for next higher post. Besides the candidate will have to face the interview and in such view of the matter it is wrong to suggest that the cadre scheme of the management is more beneficial than the cadre scheme of the JBCCI.

26. Now let us see what is interview. As per evidence of the witness out of 50 marks, 30 marks are for interview. This is completely against the pronouncement of the judgement of the Hon'ble Supreme Court reported in 1991 LLJ Vol II page 103 Supreme Court. While dealing with the matter their Lordships were pleased to hold that marks for interview and group discussion should not exceed 10% and 5% respectively of the total marks. The witness further stated that the employees working as Mining Sirdar or Overman are promoted to Sr. Mining Sirdar and Sr. Overman automatically when they fulfil the criteria but subject to interview. He has proved notices for interview for the post of Sr. Mining Sirdars. It also contains the list of the candidates called for interview but he cannot name if any of them was promoted or not. MW-6 M. M. Haqee has proved certain documents and more or less he is a formal type of witness. The minutes of the cadre scheme committee meeting dated 27-2-91 is Ext. M-20. The modified cadre scheme is Ext. M-21. Ext. M-22 is the letter written to all the heads of department for implementation of cadre scheme. Ext. M-23 series are the photo copies of the alleged compromise entered into between the management and the recognised union. With regards to Ext. M-23/2 we find that the signatories have signed on separate page and not on the compromise petition. MW-7 stated that all the workmen signatories under Ext. M-23 to M-23/3 are members of P.C.M.S. But admittedly the present dispute was not raised by RCMS.

27. Some witnesses have been examined on behalf of the workmen and most of them are Mining Sirdars and few of them got their promotions as Sr. Mining Sirdars. It was contended by the learned counsel that such promotions were only for name sake and they were allowed to remain in the same cadre and only one increment was given. WW-1 Kishun Rao WW-2 Basir Ahmed have supported these facts. They stated that Mining Sirdars and Sr. Mining Sirdars are doing the same nature of job. WW-2 stated that there were 59 Mining Sirdars and out of whom 50 have already completed more than 10 years of service. He added that only three Mining Sirdars had appeared in the interview and they have been made Sr. Mining Sirdar. Regarding the rest he stated that they had no information about the interview. WW-3 Shri Arjun Ram stated that there are 42 Mining Sirdar in 6/7 Pits Jamadoba Colliery and out of them about 25 are working as Mining Sirdars for more than 10 years. According to him there is no designation of Sr. Mining Sirdar in his Colliery. He also stated that interview letters were issued but none appeared. This suggests that the system of interview was not held in good and healthy spirit by the Mining Sirdar. Here the question arises that when bulk of the Mining Sirdars of the different Collieries did not appear for interview then it is presumed that there must be some major mistake lying with the management. Again the question arises as to who were the signatories to the compromise petition when most of them refused to attend the interview. WW-6 Shri Ashok Kumar Singh is a Mining Sirdar in Sijua Colliery. He stated that there are 60 Mining Sirdar in Sijua Colliery and out of them only about 35 completed more than 10 years of service. According to him nobody has been designated as Sr. Mining Sirdar in Sijua Colliery. WW-5 is Shri H. K. Choubey the General Secretary, Tisco Mining Supervisory Progressive front

and he is also a Mining Sirdar in Jamadoba Colliery since 1979. He stated that there are 45 employees in his union who are supervisory personnel. The witness also has produced a letter dated 19-1-1981 written by Shri T. Ganguly, Manager, Administration in connection with payment of O.T. allowance but the management directed that the same may be discussed at the meeting of the JBCCI. This further suggests that the union of Supervisory Personnel was given due consideration by the management and of course concerning few grievances the inquirer was to be discussed with the JBCCI. Admittedly this union has not been recognised by the management of Tisco. The witness stated further that in reality there has been no promotion, simply the designation of mining sirdars have been changed as Sr. Mining Sirdar by giving only one increment. I find that this fact have also been supported by other witness. The witness denied the suggestion that they do not discharge any duty of safety Assistant etc. However, I find that when no post of Safety Assistant production Assistant and Stowing Incharge exist and as such there could have been no question of any authorisation. WW-5 Sital Paswan is Sr. Mining Sirdar. He stated that there are 35 Mining Sirdars in Bhettaband Colliery and out of them 15 have completed more than 10 years of service. In this way we find that there are large number of Mining Sirdas who have completed more than 10 years of service but they have not been promoted and are rotting on the same post.

28. After having examined various aspect of the matter I find that the claims of Supervisory personnel are genuine and bona fide. When there is no post of Safety Assistant they should be promoted to the post of Senior Mining Sirdar after 10 years of experience in the pay scale of Rs. 810-46-1178-51-1586 in supervisory and technical Grade B with retrospective effect from 22-6-80. 10 years of experience is not a short experience and it is expected that one will gain maturity and proficiency after having part in such a long tenure of 10 years. In that case in my opinion, there is no need for any interview. This means that the management is not required to promote the Mining Sirdar by interview.

29. In case of Overman and Sr. Overman the pay scale is equal. The only redeeming feature in the cadre scheme of the management is that a diploma holder can be promoted to the post of Sr. Overman directly without any experience but of course through interview. Whereas in the cadre scheme of JBCCI even a diploma holder requires 3 years of experience before he is promoted to the post of Sr. Overman and that too through D.P.C. As regards other Overman the management requires 10 years of experience but on the other hand the cadre scheme of JBCCI only 5 years of experience is required. Certainly the promotion will be through D.P.C. on merit-cum-seniority basis. The word "Merit" has got its own meaning and the same has to be judged on the basis of past service record plus the interview and so the element of interview cannot be given a go-by in case of promotion to the post of Sr. Overman. Again the marks allocated in the interview must be consonance with the authority cited above. Their Lordship held that marks of interview should not be more than 10% of the total marks. If there is provision for group discussion then it should be 10% for interview and 5% for group discussion. Since the management does not hold any group discussion the total marks for interview must not exceed 15% so as to make the entire selection a mockery. On the whole I find that the cadre scheme of JBCCI is more beneficial from that of the cadre scheme of the management. So I am to direct that in case of Overman also the management to follow the cadre scheme of JBCCI. The management is thus directed to implement the Award as directed above within the period of 2 months from the date of publication of the Award.

B. RAM. Presiding Officer

नई दिल्ली, 30 नवम्बर, 1992

का. आ. 3147.—श्रीधोगिक विवाद अधिनियम, 1917 (1917 चा 14) की धारा 17 के प्रत्यसरण में, केन्द्रीय भरकार आमागीरिया कोलियरी के प्रबन्धसंस्थ के संवद नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविल श्रीधोगिक विवाद में केन्द्रीय भरकार श्रीधोगिक अधिकरण, ग्रामनसोल के पंचायत की प्रकाशित करनी है, जो केन्द्रीय भरकार की 24-11-92 की प्राप्त हुआ था।

[संख्या एल - 22012/205/92-आईआर (नी-II)]

राजा लाल, दैस्क प्रधिकारी

New Delhi, the 30th November, 1992

S.O. 3147.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Damagoria Colliery and their workmen, which was received by the Central Government on 24-11-1992.

[No. L-22012/205/92-IR (C-II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL ASANSOL

Reference No. 41/92

PRESENT :

Shri N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the Management of Damagoria Colliery,

AND

Their Workman.

APPEARANCES :

For the Employers—Shri N. P. Singh, Deputy Personnel Manager.

For the Workmen—None.

INDUSTRY : Coal STATE : West Bengal
Dated, the 4th November, 1992

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012/205/92-IR (C-II) dated the 12th October, 1992.

SCHEDULE

"Whether the action of the management of Damagoria Colliery in not referring Sri Ramsaran Harizan and 14 others to Apex Medical Board/Area Medical Board for examination of their fitness for work is justified ? If not, to what relief is the concerned workmen entitled to ?"

2. Today (4-11-92) Sri N. P. Singh, Dy. Personnel Manager of Damagoria Colliery is present for the management with a letter of authority. None appears for the union and no step is taken by the union for filing written statement.

3. This Reference was received by this Tribunal on 19-10-92. Then regd. notice was sent to both the parties fixing 4-11-92 for filing written statement. The regd. notice was served both upon the management and upon the union on 24-10-92. In response to that regd. notice the management has sent its representative. But the union has not turned up on 4-11-92 inspite of, service of notice to them. So it seems to me that the union is not interested to contest the case. As such I have no other alternative but to pass a no dispute award. Accordingly a no dispute award is passed in this case.

N. K. SAHA, Presiding Officer

नई दिल्ली, 8 विसम्बर, 1992

का.पा. 3147.—भौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की घारा 17 के प्रत्यारूप में, केन्द्रीय सरकार द्वारा कार्यस्थल धारक इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, घनवृष्टि में निर्विष्ट भौद्योगिक विवाद में केन्द्रीय सरकार भौद्योगिक प्रशिक्षण धनवाद के पंथपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-12-92 को प्राप्त हुआ था।

[संक्षा एल-22012/383/एफ/90—प्राई पार (सी-II)]

राजा साल, ईस्ट अधिकारी

New Delhi, the 8th December, 1992

S.O. 3148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 7-12-1992.

[No. L-22012/383/F./90-IR (C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I. DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 28 of 1991

PARTIES :

Employers in relation to the management of Food Corporation of India.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—Shri R. C. Mishra, Dy. Manager (General).

For the Workmen—Shri V. Kumar, State Joint Secretary, FCI Executive Staff Union, Patna.

STATE : Bihar

INDUSTRY : Food

Dated, the 13th November, 1992

AWARD

By Order No. L-22012/383/F./90-IR (Coal-II), dated, 'nil', the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of Senior Regional Manager, F.C.I., Patna, in not paying the wages in the scale of F.C.I. and other consequential benefits to Manoj Kumar and not regularising him as typist is justified ? If not, to what relief Manoj Kumar is entitled ?"

2. The case of the management of Food Corporation of India, as disclosed in the written statement-cum-rejoinder, details apart, is as follows :

Ram Naresh Sinha, working as Asstt. Manager (A/Cs) F.C.I., Patna, died on 18-10-92 leaving behind him his widow Smt. Kanti Sinha and two sons, namely, S/Shri Sanjay Kumar and Manoj Kumar and two daughters. Smt. Kanti Sinha, the widow of late Ram Naresh Sinha made an application on 25-11-82 addressed to the Sr. Regional Manager, Patna praying for appointment of her second son, Manoj Kumar the concerned workman as dependent of her husband on humanitarian ground in consideration of death of her husband while in service. Her application was sympathetically considered by the Sr. Regional Manager and the concerned workman was given casual appointment as Typist on 15-3-83 on a consolidated salary of Rs. 386 per month pending final decision to be taken for suitable employment in place of his deceased father. He was given some unimportant jobs of typing as and when required to enable him to learn the job and gain experience in typing. But when his case was examined after receipt of his bio-data, it was observed that he was below the age of 18 years, and as per provision of the F.C.I. (Staff) Regulations, 1971, he could

not be engaged because of his underage being below 18 years. Smt. Kanti Sinha, mother of the concerned workman, was informed by letter dated 14-2-84 that her request for employment of her son Manoj Kumar could not be accepted as he was below 18 years of age. Thus initial appointment of Manoj Kumar was illegal and void ab initio. The concerned workman was dis-engaged as casual typist. Subsequently the F.C.I. Executive Staff Union, Patna, raised an industrial dispute on behalf of the concerned workman by their letter dated 7-5-1984. But that industrial dispute was withdrawn by the union after an understanding was reached between the union and the management that Sanjay Kumar, 1st son of late R. N. Sinha and Smt. Kanti Sinha should be considered for appointment. Pursuant to the said agreement reached between the union and the management Sanjay Kumar, 1st son of Smt. Kanti Sinha and late R. N. Sinha, was appointed to the post of Technical Assistant Grade-III (Category III post) by letter dated 26-9-84 issued by the Sr. Regional Manager. Sanjay Kumar has been continuing in the employment of the management since then. The concerned workman by his application dated 3-11-87 raised another dispute before the Asstt. Labour Commissioner (C), Patna. On compassionate ground two sons of a deceased employee can not be offered employment. In 1984 the management issued notification to the Employment Exchange for forwarding list of candidates interested for the jobs of typists in the establishment. The management also got a notification published in the newspapers inviting application for the post of typists. In pursuance of the above Notification several candidates submitted their applications alongwith their bio-data. They were called for interview and typing tests and 21 candidates were selected as typist and they were given employment in 1985. The concerned workman did not apply for the regular post of typist alongwith his bio-data in pursuance to the Notification referred to above. He raised an industrial dispute in the year 1988 challenging termination of his service with effect from 24-4-84 as illegal and the said dispute was referred to the Central Government Industrial Tribunal No. 2, Dhanbad, for adjudication. The said reference was numbered as Reference No. 6 of 1989 and an award was passed on 9-6-1989. The Tribunal passed an award holding that the termination of the service of the concerned workman amounted to retrenchment and non-compliance of condition precedent for effecting retrenchment was unjustified. The concerned workman was allowed to continue in his employment as casual Typist. The management implemented the award and permitted the concerned workman to continue in employment as casual typist and he was paid all his back wages. He joined his duty on re-instatement as casual typist on 24-8-89 and has been continuing in that post. There existed no vacancy in the post of regular typist in the establishment. There has been no direct appointment/recruitment of any regular typist after 1985. As per the F.C.I. (Staff) Regulations, 1971 a casual employee/worker can apply for his selection on regular basis whenever permanent vacancy arises and advertisement is issued inviting application from the candidates against regular vacant post. As per procedure of direct recruitment enumerated in the Staff Regulations, a casual employee shall be eligible for appearing in the interview and typing test alongwith the candidates sponsored by the Employment Exchange as well as candidates directly applying in pursuance of Notification issued in the newspaper, for regular appointment. As no occasion arose after 1985 for calling candidates for interview and typing test for their selection as regular typist, the concerned workman has no opportunity to avail himself of any opportunity for his selection as a regular typist. Besides, the concerned workman has not properly learnt the job of typing and has got no speed of 40 words per minute in English typing which is minimum standard

required for appointment as regular typist in the F.C.I. His knowledge in English is below standard as a result he cannot take dictation in long hand and correctly type the same. He makes mistakes in the spelling and the typing done by him is of very poor quality. Therefore, he has not been posted in a place where there is regular typing work and dictation is required to be taken. He has been posted in a place where there is practically no typing work and occasional copying of certain papers are done as per requirement from time to time. He is not at all suitable for the post of regular typist and is allowed to continue as casual typist as per award of the Tribunal. The management has no objection to regularise him in service if he passes the necessary typing test to be conducted by the Regional Recruitment Committee, F.C.I., Patna or by this Tribunal. The regular typist must be capable of taking dictation in long hand and type the same correctly. He is not engaged for the entire duty hours in regular typing jobs. The efficiency of typing should be minimum of 40 words per minute in English typing and spelling mistake should be to the minimum as specified in F.C.I. circular/instruction. The casual typist is not required to take dictation in long hand and he is not given typing jobs for the fully duty hours. He does some typing work mostly for making copies of certain existing documents/papers as and when required. The management has prescribed the time scale for regular typist whereas for casual typist lump sum amount is paid per month. The demand of the union for regularisation of the concerned workman in service and payment of time scale of regular typist of him is unreasonable as he is not a regular typist and he does not perform the job of regular typist with the speed and efficiency prescribed for regular typist.

3. The case of the workman, as appearing in the written statement submitted on his behalf by the sponsoring union, F.C.I. Executive Staff Union, Patna (Bihar), briefly stated, is as follows :

The concerned workman was appointed as casual typist on 15-3-83 by the Senior Regional Manager, F.C.I. Patna and allowed a consolidated amount of Rs. 386 only as monthly wages. Since the date of his appointment he has been getting Rs. 386 per month as wages. After the appointment of the concerned workman as casual typist, several others, namely, S/Shri Bhamu Prasad Singh, Satish Kumar Singh, Ravindra Kumar, Ravindra Kumar Singh, Brahamanand Singh, P. C. Tiwary, F. X. Lobo, Manoj Kumar, Kishori Prasad, Akhilesh Kumar Singh, Ashok Kumar, Saroj Ranjan Chakraborty, Kapildeo Prasad, Ramashray Yadav, Ram Dutta, Manoj Kumar, Ratan Lal, Tapan Kumar Das, Sushil Azam, Premasagar Prasad Singh, Sushila Handa were appointed as regular typists in the years 1984 and 1985 and they are getting wages and other benefits in the scale prescribed under the F.C.I. (Staff) Regulation, 1971. The concerned workman and other regular typists are doing similar and identical jobs but the concerned workman being a casual typist is getting an amount of Rs. 386 per month since 15-3-83, though a regular typist appointed in 1984 and 1985 are getting Rs. 2500 per month. Besides, he is not being provided any other facilities, like medical allowance, lunch-subsidy, conveyance allowance, bonus, L.T.C. available to a regular typist. He is not also being given the facility of any kinds of leave, like casual leave, earned leave or commuted leave. He is doing better and more work than a regular typist in anticipation of regularisation in service and in apprehension of retrenchment. He himself and through his union requested the management for regularisation of his service and also payment of wages and consequential benefits at par with regular typist, but nothing has been done till now. Since the concerned workman is doing identical/similar job as regular typists are doing he is entitled to get wages meant for regular typist in the time scale of F.C.I. He is also entitled to consequential and fringe benefits as are available to regular typist. He is entitled to be regularised in service

from 15-3-83 as because other junior persons were appointed on regular post after his appointment. The Senior Regional Manager, F.C.I. Patna has requested the Zonal Manager, F.C.I. Calcutta, to regularise the service of the concerned workman who is being kept as casual typist to avoid his regularisation and payment of wages and other benefits at par with regular typist. In the circumstances, the union has prayed that the concerned workman should be regularised in service and his seniority should also be fixed from 15-3-83 and paid wages in the time scale of regular typist.

4. In rejoinder to the written statement of the union, the management has asserted that the persons named at para 3 of the written statement of the union were recruited as regular typists in 1985 after they were cleared by the Regional Recruiting Committee by holding interview and typing test in accordance with F.C.I. (Staff) Regulations, 1971. The concerned workman was not on the roll of the management at the relevant time. He did not enroll his name in the Employment Exchange and did not apply for the post of regular typist in pursuance of Notification published in the newspapers. The management has denied that the concerned workman and the regular typist are doing the similar and identical jobs. As a matter of fact the efficiency of work of a regular typist and the concerned workman can not be compared with. The concerned workman has practically no capacity to take dictation and type the same correctly. As he is not a regular typist he is not getting the facilities attached to such posts. It has been denied that the concerned workman is doing better and more work than a regular typist. He never applied for his regularisation expressing his willingness to appear before the Regional Recruitment Committee and for giving typing test. His claim is based on length of casual service only without undergoing the test of his suitability. He was appointed as a casual typist in F.C.I. on 15-3-83 purely on humanitarian ground and he can not be regularised with effect from 15-3-83. The management never refused to consider the case of the concerned workman for his regularisation if he is found suitable by the Regional Recruitment Committee. The initial engagement of the concerned workman was illegal and void as he had not attained the age of 18 years at the time of his appointment on 15-3-83. As per Rule 5 of F.C.I. (Staff) Regulations, 1971, the Senior Regional Manager had no authority to relax the age of a candidate for entry into service and he could not engage the concerned workman as he was below the age of 18 years.

5. In rejoinder to the written statement of the management, the union has stated that the appointment of the concerned workman as typist with effect from 15-3-83 was not subject to final decision to be taken for suitable employment in place of his deceased father. The concerned workman was appointed as typist on casual basis only after appearing in typing test and submission of certificate of medical fitness. It has been denied that he was given and is being given unimportant job of typing as and when required to enable him to learn the job. He was appointed by the Competent Authority after observing all the formalities except calling for name from Employment Exchange. The age was also condoned by the Authority at the time of appointment. The entire fact with regard to his appointment with effect from 15-3-83 was considered by the Central Government Industrial Tribunal No. 2, Dhanbad and the Tribunal held that the appointment of the concerned workman was legal and his age was condoned by the Competent Authority and he was appointed after observing all formalities. All the papers relating to regularisation of the concerned workman have been submitted before the management. There was vacancy at the time of his initial appointment in the post of regular typist and at that time there was no restriction of direct recruitment of the typist. There is no question of his fresh in the post of typist since the concerned workman is already in service against regular vacancy. The Headquarter of F.C.I. by Circular dated 6-5-87 had already issued direction for regularisation/appointment of casual typist against Class III and IV entry level post, therefore, the submission of the management is not correct and is fit to be rejected. The regular and casual typists are not required to take dictation in long hand. The Dy. Manager (IA&PV) has recommended the case of the concerned workman for regularisation in service as he is a good worker and has requisite speed of typing. The concerned workman has been doing the same and identical

nature of job as regular typist and his performance is better than a regular typist.

6. In support of its action, the management has examined two witnesses, namely, MW-1 H. L. Prasad posted as Regional Manager, F.C.I. Patna from September, 1988 till 12-7-1991 and MW-2 Shyamsunder Ray posted to Regional Office, F.C.I., Patna from February, 1986 to 4-12-1991 as Asstt. Manager (Personnel) and laid in evidence a mass of documents which have been marked Exts. M-1 to M-34.

On the other hand, the union has examined the concerned workman as WW-1 and another witness, Bhagirath Prasad Singh as WW-2 and laid in evidence some documents which have been marked Exts. W-1 to W-14.

7. Admittedly, Ram Naresh Sinha, Asstt. Manager (A/Cs) F.C.I., Patna died on 18-12-82 leaving behind his wife, Smt. Kanti Sinha, two sons, namely, Sanjay Kumar and Manoj Kumar and two daughters. Consequently upon the death of her husband, Smt. Kanti Sinha made a representation dated 25-11-82 to the Senior Regional Manager, F.C.I. Patna for employment of his youngest son, Manoj Kumar in the establishment of F.C.I. (Ext. M-1). Her representation was considered at various levels (Ext. M-2) and Manoj Kumar was given appointment as casual typist on a consolidated amount of Rs. 386 per month on compassionate ground by office order dated 15-3-83 issued on behalf of Senior Regional Manager, F.C.I., Patna (Ext. M-3). Manoj Kumar reported for duty as casual typist with effect from 15-3-83 (Ext. M-4).

At the time when Manoj Kumar was appointed, he was below the age of 18 years. The question of his being underage was referred to the Zonal Manager, F.C.I., Calcutta (Ext. M-8) and the Zonal Office refused to relax the age of the concerned workman by letter dated 25-10-83. Thereafter the service of the concerned workman was terminated by the Senior Regional Manager, Patna by letter dated 24-4-84 (Ext. M-5). Again Smt. Kanti Sinha made a representation to the Zonal Manager, F.C.I. Calcutta on 30-4-84 for employment of her eldest son, Sanjay Kumar, a B.Sc. to a suitable post (Ext. M-9). Her application was considered on compassionate ground (Ext. M-11) and ultimately Sanjay Kumar was appointed as Technical Assistant Grade-III (Category III post) by letter of appointment dated 26-9-84 (Ext. M-18).

8. Manoj Kumar, the concerned workman raised an industrial dispute over his termination of service with effect from 24-4-84. The appropriate Government referred the dispute for adjudication to the Central Government Industrial Tribunal No. 2, Dhanbad, for adjudication. The reference was numbered as Reference No. 6 of 1989. The terms of reference in the said dispute was as follows :

"Whether the action of the management of Food Corporation of India in retrenching Sri Manoj Kumar w.e.f. 24-4-84 without observing conditions laid down under Section 25-F of the I. D. Act, also when his appointment was on compassionate ground, is legal and justified ? If not, to what relief the workman concerned is entitled ?"

The management took up the plea that the initial appointment of Manoj Kumar was illegal and void ab initio and so the question of compliance of Section 25-F of the I. D. Act did not arise. The entire gamut of facts as mentioned above were also mentioned in the written statement of the management submitted in that reference case. The Central Government Industrial Tribunal No. 2, Dhanbad, rendered an award holding that the appointment of Manoj Kumar was not legal and that termination of his service by the management without complying with the mandatory provision of Section 25-F of the I. D. Act was illegal and unjustified. The Tribunal directed the management to allow the concerned workman to join his duty and to pay all his dues within two months from the date of publication of the award. Hence, the cutting edge of the contention of the management that the initial appointment of Manoj Kumar was illegal and void ab initio has been entirely blunted by the award rendered by the Central Government Industrial Tribunal No. 2, Dhanbad.

9. In the present reference the principal issues are the issues of regularisation of the concerned workman in service and payment of wages to him in the time scale of F.C.I.

The contention of the management in denial of regularisation of service of the concerned and payment to him wages as per time scale of F.C.I. is that (a) he is not capable or taking dictation in long hand, (b) he is not doing the same nature of job as regular typists are performing and that (c) there is no vacancy in the post of regular typist. The union has denied and disputed all these contentions. The first question that rams for determination is whether the regular typists are required to take dictation in long hand. MW-1 H. L. Prasad was posted as Regional Manager, F.C.I., Patna from September, 1988 till 12-7-91. He has stated that the regular typist has to perform 8 hours duty for typing work and any other jobs assigned to him by his superior, such as, filing, taking long hand dictation as and when required etc. In cross-examination he has stated that regular typists are required to do typing work in respect of matters placed in the files and put up before them. The management issued advertisement in the issue of 'Indian Nation' dated 5-7-84 inviting application for appointment to the post of typist and stenographer Gr. II in the F.C.I. In the advertisement the qualification for appointment to the post of typist was as follows :

"Qualification—Matriculation or equivalent with typing speed of 40 words per minute."

There is nothing in the advertisement to indicate that regular typists are required to take long hand dictation in English. This being so, the contention of the management that the regular typist are required to take down long hand dictation in English does not stand test of scrutiny and is considered as an afterthought.

10. Manoj Kumar, figuring as WW-1, has stated that after successful completion of test he was appointed as casual typist and posted to Industrial Relations Department. Sometime in 1984 and 1985 the management of F.C.I. appointed some typists on regular basis. But did not regularise him as typist in 1984 or 1985 or even afterwards. He has asserted that there is no difference between the job and duties performed by him and those performed by regular typist and that he has been doing his duties from 10 A.M. to 5 P.M. alike regular typist. WW-2 Bhagirath Prasad Singh has been working in the District Office at F.C.I. at Patna as Grade-II Ministerial Staff.

He is also holding the post of Joint Secretary of Executive Staff Union of F.C.I. He has stated that the duties and job description of regular typist and casual typists are the same and as a matter of fact output of casual typists are much more than regular typists inasmuch as casual typist work in anticipation of regularisation and also in apprehension of dismissal from service. He has further stated that Manoj Kumar had been posted in his section during 1983 and 1984. He had occasion to observe that his speed was upto the mark.

It appears that by Office Order dated 23-1-91 (Ext. W-1) the concerned workman attached to IA and PV Section was posted to Claim Section and he was directed to attend to the work of IA and PV Section in addition to his work in Claim Section. This Office Order itself speaks volume with regard to the performance of the concerned workman. He was deployed to work in Claim Section and in addition he was also directed to attend the work of IA and PV Section. Had his performance not good, he would not have been directed to attend to the duties of two sections at a time. Anyway, the management has produced Special Performance Report of the concerned workman from 1-1-90 to 31-12-90 and 1-1-91 to 31-8-91 (Exts. M-34 and M-34/1 respectively). It appears from this report that Gouri Shankar Prasad, Reporting Officer, reported about the knowledge and general performance of the concerned workman as "inadequate" for the period from 1-1-90 to 31-12-90 and "needs improvement to get proficiency in typing" for the period from 1-1-91 to 31-8-91. His general remarks about the fitness for regularisation of the concerned workman was the same in both the reports—"Not fit for regularisation at present". MW-2 Shamsundar Roy was posted as Asstt. Manager (Personnel) from February, 1986 to 4-11-1991. He has proved the Special Performance Report in respect of the concerned workman. In his deposition before this Tri-

bunal in Reference No. 45 of 1991 he has stated that Special Performance Report in official parlance is meant for Class-IV Staff and Annual Confidential Report is meant for Class-III Staff. The concerned workman, admittedly, is a Class-III Staff. But Shri Roy has volunteered to state that the management as and when required may obtain Special Performance Report in respect of Class-III Staff. But no document has been produced before me to indicate that the management has got such right. On the other hand, MW-1 H. L. Prasad has stated that C.C.R./P.R. is made in respect of only regular workman and he never directed his subordinate to write out the C.C.R./P.R. in respect of the concerned workman nor did he file such report in respect of him himself. Hence the question remains as to whose instance the Special Performance Report in respect of the concerned workman was made. The evidence on record does not indicate any answer. Shri Gouri Shankar Prasad, Asstt. Manager (Audit) IA and PV Section, Regional Office, Patna, by letter dated 15-9-91, has made retraction of the "Special Performance Report submitted by him in respect of the concerned workmen. The letter is reproduced hereinbelow (Ext. W-6) :

"With heavy heart, I am compelled to bring to your kind notice that today Shri S. S. Roy and Shri N. N. Saran, Asstt. Manager, personally met me in the office and asked me to give particular of performance in respect of Shri Manoj Kumar, Casual Typist as per his dictate in a prescribed proforma which I had no occasion to see earlier.

Since the particulars indicate in the said proforma was entered by me under coercion in respect of Shri Manoj Kumar, Casual Typist the same may not be treated as my independent statement of fact."

There is allegation in this letter that S/Shri S. S. Roy and N. N. Saran, Asstt. Manager coerced him to submit particulars of performance in respect of the concerned workman. Shri Roy has offered an explanation by stating that this letter was not within his knowledge and it was obtained from Shri Gouri Shankar Prasad after his superannuation from service with back date. Shri V. Kumar, State Joint Secretary by letter dated 3-10-91 requested the Sr. Regional Manager to call Gouri Shankar Prasad to have true state of affairs from him as, according to him, S. S. Roy, Asstt. Manager (Personnel) and N. N. Saran, Asstt. Manager (General), A. N. Gupta, Dy. Manager and P. K. Mukherjee, Jt. Manager (Finance) in connivance with each other has manufactured a false and concocted report against Manoj Kumar under the signature of Gouri Shankar Prasad and filed the same in a sealed envelope in the Tribunal at Dhanbad. Shri Roy has admitted that this letter was received in the office of the Corporation. Manoj Kumar requested the Sr. Regional Manager, F.C.I. Regional Office, Patna for his regularisation and payment of full arrear of wages by letter dated 27-1-90 (Ext. W-8). Shri Roy has stated that Ray Choudhary, Dy. Manager of the concerned workman made notings in his own handwriting on the representation of the concerned workman. The notings of Ray Choudhary are as below :

"Forwarded. Shri Kumar is very hard worker and his speed as typist is also up to the satisfaction and to the mark."

This being the evidence, I am constrained to hold that the performance of the concerned workman as typist is upto the mark and that his duties are comparable to the duties of regular typist. Special Performance Reports are inspired report which have been brought into being some scheming persons in order to whittle down the case of the concerned workman.

11. Now remains the question of vacancy. The contention of the management is that there exists no vacancy in the post of typist. The union has produced statement showing sanction/existing vacancy position of Bihar Region as on 30-11-88 (Exts. W-10/1 and W-10/2). This statement discloses that there existed 36 vacancy in the post of typist (English) at the relevant time. WW-2 Bhagirath Prasad Singh has stated advertising to this document that there were 52 vacancies in the post of regular typist and against such vacancy 16 posts were filled up leaving a net vacancy of 26 regular vacancy in 1988. Manoj Kumar has also stated there exist two sanctioned post of typist in IR and PV Section and even though there exists two sanctioned post of typist, he was posted there all along as casual typist. In the context of this evidence the contention of the management that there existed no vacancy in the post of regular typist in a figment of imagination.

12. The concerned workman has been working as casual typist. He had worked as casual typist from 15-3-83 till 24-4-84 when his services were terminated. By order of the Tribunal he got back his employment on 24-8-89 with continuity of employment and has been working as casual typist since then. It is a proven fact that the concerned workman has been working as casual typist over the years. The management has done a patent injustice to him by not regularising him in service. I consider that he should be regularised in service with effect from 9-6-89 when the Central Government Industrial Tribunal No. 2, Dhanbad, passed award in favour of the concerned workman and paid wages according to scale minus the wages already paid together with other consequential benefits.

13. According, the following award is rendered—

The action of the Senior Regional Manager, F.C.I. Patna, in not regularising the services of the concerned workman, Manoj Kumar, as a Typist and not paying him wages according to scale and other consequential benefits is not justified. The management is directed to regularise the concerned workman in service with effect from 9-6-1989 and pay him wages according to scale minus wages already paid and give him other consequential benefits within one month from the date of publication of the award.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 8 दिसम्बर, 1992

का. आ. 3149.—ओद्योगिक विधाव अधिनियम, 1947 (1947 का 14) की वारा 17 के अनुसरण में, कोशीय सरकार कृष्णा नगर कौलायरी आफ मैसरी ई. सी. लि., के प्रबन्धतांत्र के संबद्ध तियोजकों और उनके कर्मकारों के बीच, प्रतुर्बंध में निर्विष्ट ओद्योगिक विधाव में के क्षेत्रीय सरकार ओद्योगिक अधिकारण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-12-92 को प्राप्त हुआ था।

[संख्या एल - 19012/7/86-वि. IV(बी)]

राजा लाल, डैस्ट्रिक्ट अधिकारी

New Delhi, the 8th December, 1992

S.O. 3149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Krishnanagar Colliery of M/s. E.C. Ltd. and their workmen, which was received by the Central Government on 7-12-92.

[No. L-19012/7/86-D.IV.(B)]

RAJA LAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 53 of 1986

PARTIES :

Employers in relation to the management of Krishnanagar Colliery of M/s. E. C. Ltd.

AND

Their Workmen

PRESENT :

Mr. Justice Manash Nath Roy.—Presiding Officer.

APPEARANCE :

On behalf of management.—Mr. P. Banerjee, Advocate.

On behalf of workmen.—Mr. N. Ganguli, Advocate.

STATE : West Bengal

INDUSTRY : Coal

AWARD

Krishnanagar Colliery (hereinafter referred to as the said colliery) of E. C. Ltd., dismissed one Sri Bhola Singh (hereinafter referred to as the said employee), from his services with effect from June 1, 1984 (Ext. M-10), after a Charge Sheet dated August 24, 1983 (Ext. M-2/1) and an enquiry thereafter.

2. The validity, bona fide and otherwise of the said dismissal, on being challenged, by an Order of Reference, the dispute as under :

"Whether the Management of Krishnanagar Colliery of M/s. E. C. Ltd., P.O. Bahula, Distt. Burdwan (W.B.) is justified in dismissing Sh. Bhola Singh, Under Ground Loader, with effect from 1-6-1984? If not, to what relief the workman is entitled?"

was referred to this Tribunal, for adjudication, under section 10(1)(d) and Sub-Section (2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act), by Order of Reference No. L-19012/7/86-D.IV(B) dated July 4, 1986.

3. The said Bhola Singh has neither filed his statement nor deposed before this Tribunal. But, his cause was represented by or through the General Secretary, Colliery Mazdoor Union (hereinafter referred to as the said Union), who, by their Written Statement filed on December 31, 1986, claimed that after his dismissal as aforesaid, the said employee preferred an appeal against the order of dismissal and asked for the review of the order, which was not done.

4. The said Union has stated that the said employee was under the treatment of the erstwhile Searsol T. B. Hospital upto April 10, 1984, which fact, according to them, was known to the said colliery. It has been stated that the said employee, being a chronic T. B. Patient, was having the treatment as aforesaid, as an outdoor patient at that Hospital, long prior to June 24, 1983 and he was on leave on medical ground from July 24, 1983 to August 24, 1983 and from April 10, 1983 to April 10, 1984, as he was under such treatment.

5. It has been agreed, as per charge sheet dated August 24, 1983 (Ext. M-2/1), the said employee was asked to report to the Medical Officer of the said Colliery. It is also an admitted fact that the said employee is an under ground loader, which job, representatives of both parties indicated, to be a strenuous one. The said Union has alleged that because of such ailment, the said employee was moving about from place to place and such fact was well within the knowledge of the said Colliery. But, inspite of such fact, the order in Ext. M-2/1 as mentioned above, was issued. It has been stated that the said employee reported for duty in November 1983, to the Medical Officer of the said Colliery, who has been alleged to have asked him to continue his treatment at the said Searsol T. B. Hospital and thereafter, on and from April 10, 1984 he was declared fit to join the duty, by the said Hospital and on that basis, he was also allowed to join his duties. The report as prepared on the basis of available evidence has been claimed to have been submitted to the Colliery and the same was accepted and thereafter, by the order in Ext. M-10, the said employee was decided to be dismissed.

6. There was no dispute that the said employee was engaged in the said Colliery as under ground wagon loader, which again, the learned representatives, as indicated earlier, agreed to be a strenuous job. Mr. Banerjee pointed out that the charge sheet Ext. M-2/1, could not be served on the said employee twice, as would appear from the notings on the envelops, as appearing in Exts. M-11 and M-12. The said envelops containing the said notices were claimed to have been sent to the last known address of the said employee. It was the submission of Mr. Banerjee, on such happenings, the same charge sheet, of course with different dates, being Ext. M-2/1 dated August 24, 1983 and Ext. M-13 dated October 29, 1983 were sent and really the enquiry, as will appear from the Report Ext. M-2/2, was held on the charge sheet dated August 24, 1983 and in the enquiry, the said employee duly participated, without taking any exceptions regarding the charge sheet, with regard to vagueness or in any manner whatsoever. It has been indicated

further that at the enquiry, the said employee was given all and due and necessary, opportunities to defend himself and as would appear, he and his helper duly signed the proceedings. It will appear, by an Order dated April 17, 1984, Sri J. B. Mondal, was designated as the Enquiry Officer in the case and Sri R. N. Goral, Engineer (E & M), was nominated as the Management's Representative. I have indicated the above facts, as, much was said and contended by Mr. Ganguli, appearing for the said Union that the said Sri Goral, not only noted as Management's representative, but he also acted as Management's witness and prosecuted the proceedings. Mr. Banerjee pointed out that, as a representative of the said Colliery, the said Sri Goral just presented the case of the said Colliery and really, took no other part and as such, those submissions of Mr. Ganguli, as mentioned above, had no justification and merit. The original charge sheet, as indicated earlier, has been marked as Ext. M-2/1 and on comparison of the same with the other copies of the charge sheet Ext. M-13 as available, it will appear that accepting the change of dates of those charge sheets, the terms of the original charge sheet were not at all changed and the circumstances for which, those two charge sheets were sought to be recommunicated, have been indicated earlier. Furthermore, the said employee had no difficulty in the matter and he, really continued and participated in the enquiry and that too, without any objection, on the basis of the original charge sheet Ext. M-2/1. So, there would be no justification in accepting the submissions of Mr. Ganguli, on the vagueness or any indefinite character of the charge sheet, as submitted. It is true, the said employee did never take any exceptions to the charge sheet in the manner as indicated or in any manner whatsoever and furthermore, it is evident, on his unequivocal statement as contained in his Written Statement that, he was absent from July 14, 1983 to August 24, 1983 i.e. about one month, on Medical Ground.

7. There is of course no definite clear evidence available on that account and then, he was absent from April 10, 1983 to April 10, 1984, as he was under treatment. To establish such fact, reference was made to a Daily Note Book, bearing No. 241, with the Rubber Stamp seal at the front cover page and two inside pages of the same. The seal at the first inside page, was dated April 10, 1983 and the next page was with the date April 10, 1984, with some prescriptions and prognosis. Apart from the above, there was a prescription on a loose sheet along with that note Book. This was dated April 5, 1983 and also dated April 6, 1983, written at the back of the same. But, none of these dates or records were duly proved at the enquiry and they were just produced. Any way, it will appear from the records, either on 5th or 6th, the said employee, had his first treatment in the T. B. Hospital Searsole, and was last treated there, on April 10, 1984.

8. Regarding the first part of his absence as above, the said employee has neither produced any evidence here or before the enquiry, excepting the said note book, which was not duly or appropriately proved. In his statement before the Enquiry Officer, as recorded on April 18, 1984, he has of course made some statements regarding his illness and also the fact that he was not aware of the provisions of the Standing Orders (part of Ext. M-14). But, he has not denied the existence, validity, legality or otherwise of the same. He has, in fact, not denied that such long absence of his, on two occasions, were without any notice or intimation to the said Colliery. So, it cannot be doubted or disputed that there was non compliance with the provisions of the Standing Orders, more particularly, with sub-clause (n) which postulates that continuous absence without permission and without satisfactory cause for more than ten days, will be considered as misconduct, entailing disciplinary section under and in terms of Clause 17(1) of the said Standing Order. Clause 10(e) of Ext. M-14 indicates that, if a workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his appointment, unless he (a) returns within ten days of expiry of his leave and (b) explains to the satisfaction of the Manager, his inability to return on the expiry of his leave. Clause 10(g) of the said Order, further indicates that notwithstanding anything mentioned in Clauses 10(a) to (f), any workmen, who overstates his sanctioned leave or remain absent without reasonable cause, will render himself liable for disciplinary action. The said employee

here, by his acts, conduct and actions exposed himself to the vigours of those clauses of the Standing Orders. Although Mr. Banerjee referred to the above provisions, they to my mind, will have little or no application in facts of this case, as there was no or has been any evidence, as indicated earlier that the said employee was on sanctioned leave on any leave. Thus, the case, here, will have to be considered on the basis of Clause 17(1)(n) of the Standing Order.

9. It cannot be observed otherwise than holding in the facts of this case that, the said employee was guilty of intimation of Clause 17(1)(n) of the concerned order. It must also be noted that even in such a case, when the authorities inflict a punishment, as in this case, they shall, in terms of clause 17(iv), take into account the gravity of the misconduct, the previous records, if any, of the workman and any other extraneous or aggravating circumstances that may exist. This clause also requires that a copy of the order passed by the authority, awarding punishment, shall be supplied to the workman concerned. This was done in this case.

10. As noted bearing No. M.W. 1-A(2)85-1 dated July 20, 1983 was produced as Ext. M-2, for the purpose of showing that the T. B. Hospital, Searsole was initially a private institution and the same, with effect from July 20, 1983, was transferred to be a subsidy of Coal India and S.C.C.L., from Coal Mines Welfare Organisation's Hospital and Rehabilitation Centres. On the basis of the above, Mr. Banerjee contended that any treatment earlier received by the said employee from the said T. B. Hospital, Searsole, was thus, from a private Hospital and that too, cannot be taken into consideration, since there is also no evidence that the said employee was sent or directed there, for treatment by the said Colliery. Really, there was also paucity of legal evidence on this point. In this case, the Schedule of delegation of powers, was also produced as Ext. M-3, but no determination on such delegation is necessary, as no submission was advanced on the authority of the Enquiry Officer. In fact, Mr. Ganguli submitted that MW-1 had no power to dismiss. This submission of Mr. Ganguli was of little substance, as in this case, the order of dismissal was not passed by MW-1, but the same was passed by the General Manager, Kenda Area, as would appear from Ext. M-10.

11. It was duly pointed out by Mr. Banerjee that the absence of the said employee without any intimation, was an admitted fact, the note Book as indicated earlier, only showed justification, if any, for the absence from April 10, 1984, and that too while in treatment in a private Institution, without due reference by the said Colliery and above all, the said employee has not himself deposed anywhere and thus, has not legally proved his case. I have earlier indicated the nature and character of the Note Book. The nature and character of the said T. S. Hospital at the relevant time, was just a Private Institution, as would get support from Ext. M-9. The said employee has not also duly informed the said Colliery about his long and continuous absence and for that, he was liable to be proceeded with under Clause 17(1)(n) of the Standing Order, as indicated earlier. He, in my view, was appropriately proceeded with and in the enquiry, he was afforded with all due and necessary opportunities. In fact, there was no hindrances created in the matter of getting his case defended or conducted at the said enquiry and there was no derth or any infraction of principles of natural justice.

12. I have indicated some of the submissions of Mr. Ganguli and my answer to them. In addition to those submissions, Mr. Ganguli submitted that the charge sheet was vague, as the same has mentioned clause 17(1)(a) of the Standing Order, which has nothing to do with absence of the present nature, for which, the said employee has been charged and in fact, the said clause 17(1)(a) deals with theft, fraud or dishonesty, in connection with the employer's business and on which score, admittedly, there was no charge against the said employee. This fact is true. It is also true that in the charge sheet Ext. M-2/1, the Clause mentioned is Clause 17(1)(A), which was certainly a wrong mentioning of the clause. But, such wrong mentioning of the clause, will not matter much, as admittedly the said charge sheet has specifically informed the said employee that he was absenting

himself from duty continuously since July 24, 1983, without satisfactory cause and without permission of the competent authority, causing serious dislocation of Company's work and such act, constituted serious misconduct. The above is certainly covered by the terms of Clause 17(1)(n) of the Standing Orders. Thus, there was certainly a wrong recording or mentioning of the relevant clause, but, such wrong mentioning and more particularly when, the terms and requirements of the relevant clause have been recorded, was not fatal, the more so when, the said employee has no where recorded or mentioned about any such difficulty or really complained about the same.

13. Thus, the action in this case cannot be termed or considered as unjustified, as claimed by Mr. Ganguly. In support of his submission, Mr. Ganguli referred to the case of Bhagal Ram Vs. State of Himachal Pradesh & Ors., A.I.R. 1983 S.C. 454, which, amongst others, has indicated that if the findings of disciplinary authority are utterly perverse, the High Court can interfere with the same in writ proceedings. It is true that if perversity is there in the findings of the enquiry authority, this Tribunal will not be denuded of its power to interfere. But, there being no such perversity in this case, I am of the view that the above views and observations in the given case, will not help the said employee.

14. Then, a reference was also made to the case of Scooter India Ltd., Lucknow, Vs. Labour Court, Lucknow & Ors., A.I.R. 1989 S.C. 149. In that case, on construction of Section 11A of the said Act, it has been indicated that even if the disciplinary enquiry was found to be fair and lawful and the findings thereof were not vitiated in any manner, that would be no ground for non-interference with the order of termination of service by Labour Court. In the facts of that case, the Labour Court, gave directions for reinstatement of the employee with 75 per cent back wages, on the ground that the concerned employee should be given opportunity to reform himself and prove to be loyal and a disciplined employee of the Company. The employee in that case, was charged for more than one offences, which pertained to acts of major misconduct and all the charges were proved, yet, the order as above, was made. It has been indicated that the workman was unfortunately to blame himself for much of the bad blood, which had developed between him and the Management and so his conduct, which was motivated by ideals, which are not relevant, was far from being satisfactory in so far as the same was rough, bordering on rudeness and with highly exaggerated sense of his duties. In those circumstances, it was indicated, the ends of justice will be satisfied, if back wages, to the extent as indicated, was allowed. Thus, it will appear that there were some extenuating circumstances or back ground, for which the conduct of the workman was condoned. In that case, there was no evidence that the workman was suffering from such a disease as in this case, and the work of the said employee here, was very strenuous. Tuberculosis, of course now a days is curable but even then, it may not be possible for the said employee, who was employed as an underground loader, which is a very strenuous work, to perform such duties and in that case, if at all, the said employee should prove his due recovery and fitness and if he will be able to function as underground loader.

15. The said employee has certainly committed a misconduct, which is punishable and he has also been so punished, after following the necessary formalities and rituals. As such, ordinarily, no interference is necessary.

16. On the basis of my findings as above, I feel that the said employee was duly proceeded with and punished, yet, in view of Section 11A of the said Act, as very fairly pointed out by Mr. Banerjee and the determinations, reported in A.I.R. 1989 S.C. 149, his case for re-employment may be considered by the said Colliery and that too, if, on due medical examination, he is found to be fit for his work or for any other lighter job, as Tuberculosis is now a days, as indicated earlier, is not a dreadful disease and is curable. But, it should be pointed out that ordinarily, the said employee will not be entitled to his back wages, as his guilt was proved and established. Yet, if the said Colliery intends to pay him something on such re-employment, as ex gratia, they can consider to pay him some reasonable amount, on

account of his sufferings. Mr. Ganguli of course indicated that such order as above, should not be made, as according to him, if such discretion in respect of payment is left with the said Colliery, they are not expected to do justice and to harass the said employee with improper and ulterior motive. Throughout the proceedings here, there has not only been no such malafide intention, act and attitude of the said Colliery, either duly pleaded or proved and indicated and as such, I feel that, there should not be any such grievance in the mind of the said employee, more particularly when, a fair lawyer like Mr. Banerjee has agreed, to inform the said Colliery that they should consider the claim and grievance of the said employee sympathetically, if he is otherwise found to be fit to discharge his duties in the post, which he was holding or for any posts requiring higher duties.

17. The reference is thus disposed of as above.

This is my Award.

MANASH NATH ROY, Presiding Officer

Dated, Calcutta,

The 20th October, 1992.

नई दिल्ली, 8 दिसम्बर, 1992

का. धा. 3150.—भौद्धिक विवाद प्रधिकरण, 1947 (1947 का 14) की धारा 17 के प्रत्यारूप में, केन्द्रीय सरकार फूट फारपोरेशन प्राप्त इंडिया के प्रबन्धालय के संबद्ध नियोजकों और उनके कर्मकारों के बीच, प्रनुब्बि में निर्विवृ भौद्धिक विवाद में केन्द्रीय सरकार भौद्धिक प्रधिकरण द्वारा के प्रबन्ध की प्रकारित करती है, जो केन्द्रीय सरकार को 7-12-92 को प्राप्त हुआ था।

[संख्या एल- 22012/457/एफ/90—शाई आर (सी-II)]

राजा लाल, डेस्क प्रधिकारी

New Delhi, the 8th December, 1992

S.O. 3150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on 7-12-92.

RAJA LAL, Desk Officer
[No. L-22012/457/F/90-IR (C-II)]

ANNEXURE A

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 45 of 1991.

PARTIES :

Employers in relation to the management of Food Corporation of India.

Vs.

Their Workmen

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers.—Shri R. C. Mishra, Dy. Manager (General).

For the Workmen.—Shri V. Kumar, State Joint Secretary, F.C.I. Executive Staff Union, Patna.

STATE : Bihar. INDUSTRY : Banking.

Dated, the 29th October, 1992

AWARD

By Order No. L-22012(457)F/90-I.R. (Coal-II), dated, the 15th April, 1991, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Food Corporation of India in denying payment of wages in the time scale of FCI, as also regularisation, confirmation, seniority and all other consequential fringe benefits as are available to a regular workman, to Sri Mithilesh Kumar Verma is justified ? If not, what relief he is entitled to ?"

2. The case of the management of Food Corporation of India, as disclosed in the written statement-cum-rejoinder, details apart, is as follows :

The present industrial dispute is not maintainable. Mithilesh Kumar Verma, the concerned workman is the son of B. N. P. Verma, who is working as Asstt. Manager (Movt.) at the District Office of F.C.I., Muzaffarpur. In 1984 B. N. P. Verma was working as Asstt. Manager (Movt.) on deployment basis. The management issued Notification to the Employment Exchange for forwarding list of candidates interested for the jobs of typist in this establishment in 1984. A notification was also published in the news papers inviting applications for the post of typists to be recruited in the establishment. The concerned workman submitted an application dated 25-7-84 in pursuance of advertisement published in the news paper, Search Light dated 3-7-84 for the post of a regular typist. He enclosed a certificate indicating that he had acquired the typing speed of 45 words per minute in English typing. The management issued interview letter 4-12-84 directing the concerned workman for appearing in typing test/interview fixed on 16-12-84 at the Regional Office of Food Corporation of India, Patna. He submitted his Bio-data on 16-12-1984 at the time of his interview and appeared in the interview and typing test on that date. But his performance in typing test was assessed as poor as per norms of typing test and he committed several spelling mistakes in typing. Beside, he should not type out the entire passage within the specified time. In the interview/typing test conducted on 16-12-84, twenty one candidates passed in the typing test and gave satisfactory answer in the interview. Consequently they were selected. These twenty one candidates were given regular appointment as regular typist. The concerned workman was found unsuitable for the post of regular typist as he failed in the typing test. He approached the District Manager, F.C.I., Muzaffarpur for his employment as a casual typist in order to give him opportunity to learn the job of typing, so that he could successfully pass the test in future. The District Manager gave him chance to work as casual typist w.e.f. 1-3-1985 for a temporary period only from 1-3-85 to 6-6-85 by letter dated 21-3-85 when five regular typists were posted in the office of the District Manager, F.C.I., Muzaffarpur. There exists no vacancy in the post of regular typist in the establishment. There has been no direct appointment/recruitment of any regular typist after 1985. As per F.C.I. (Staff) Regulations, 1971 a casual employee/worker can apply for his selection on regular basis whenever permanent vacancy arises. Advertisement is issued inviting application from the candidates against regular vacant post. As per procedure of direct recruitment enumerated at various provisions of F.C.I. (Staff) Regulations, 1971, a casual employee shall be eligible to appear in the interview and typing test alongwith the candidates sponsored by the Employment Exchange as well as candidates directly applying in pursuance of Notification issued in the news papers, for regular appointments. As no occasion arose after 1985 for recruitment of regular typist by calling candidates for interview and typing test, the concerned has not availed himself of any opportunity for his selection as a regular typist. He has not learnt the job of typing and has not acquired experience in achieving the speed of 40 words per minute in English typing which is minimum standard required for appointment as regular typist in the F.C.I. His knowledge in English is below standard; as a result he can not take dictation in long hand and correct-

ly type the words. He makes mistakes in the spelling, and typing done by him is of very poor quality. Therefore, he has not been posted in a place where there is regular job of typing and dictation is required to be taken in long hand. He has been posted in a place where there is practically no typing work and occasional copying of certain papers is done as per requirement from time to time. He is not at all suitable for the post of a regular typist. The management has no objection to regularise him if he passes necessary typing test to be conducted by the Regional Recruitment Committee, F.C.I. or by this Tribunal. Regular typist must be capable of taking dictation in long hand and type the same correctly. He is engaged for the entire duty hours in regular typing jobs. The efficiency of typing should be minimum of 40 words per minute in English typing and spelling mistake should be to the minimum as specified in F.C.I. circulars/instructions. The casual typist is not required to take dictation in long hand and he is not given typing jobs for the full duty hours. He does not do typing work mostly for making copies of certain existing documents or papers as and when required. Such typists learn the job during idle period and gain experience and speed of typing provided he has keen interest in learning the job efficiently. The concerned workman having no initiative simply idles away his time during the period of his work and as a result he could not improve his knowledge or experience. The demand of the union for payment of time scale of the typist to the concerned workman is unreasonable as he is not a regular typist and does not perform the job of regular typist with the speed and efficiency prescribed for regular typists. The management is justified in paying him wages on daily-rated basis.

3. The case of the concerned workman, as disclosed in the written statement submitted by the sponsoring union, F.C.I. Staff Union, Patna (Bihar), briefly stated, is as follows :

The concerned workman was appointed as casual typist by the management with effect from 1-3-85 at District Office, F.C.I. Muzaffarpur and since then he has been working there without any interruption. After appointment of the concerned workman several others, namely, S/Shri Ravindra Kumar, Rabindra Kumar Singh, Brahamanand Singh Satish Kumar, Singh, P. C. Tiwary, F. X. Lobo, Manoj Kumar, Kishori Prasad, Akhilesh Kr. Singh, Ashok Kumar, Saroj Ranjan Chakravorty, Kapildeo Prasad, Ramashray Yadav, Ram Dutta, Manoj Kumar, Ratan Lal, Tapan Kumar Das, Sushil Azam, Premsagar Pd. Singh, Sushila Hansda and others have been appointed as regular typists in the year 1985 and they are getting wages and other benefits in the scale prescribed under F.C.I. Staff Regulation, 1971. The concerned workmen and the regular typists are doing similar and identical job, but the concerned workman being casual typist is getting wages at the rate of Rs. 23 per day i.e. Rs. 500 to 550 per month since 1-3-85 though a regular typist appointed in 1985 is getting approximately Rs. 2500 per month. Besides, the concerned workman is not being provided with any other facilities, like, medical, lunch, subsidy in conveyance, Bonus, L.T.C. etc. available to a regular typist. He is not being given the facility of any kind of leave like casual leave, earned leave or commuted leave. He is being compelled to do his job as bonded labour. His performance is good and he has been performing more work than a regular typist in anticipation of regularisation in service and also in apprehension of retrenchment. He himself and through his union requested the management for regularisation of his service and payment of wages and other consequential or fringe benefits at par with regular typist of the management but nothing has been done so far. Pay scale of regular typist is Rs. 728-18-800-19-990-20-1090 which is effective from 1-8-83. A regular typist who is appointed in 1985, after the concerned workman, is getting Rs. 2600 per month as wages. Besides, a regular typist gets other allowances as stated before. Since the concerned workman is doing identical or same or similar nature of job which a regular typist is doing, he is entitled to get time scale of typist of F.C.I. from the date of his appointment. He is also entitled to get all other fringe benefits from 1-3-85 as available to regular typist. He is also entitled to his regularisation in service with effect from 1-3-85. The District Manager, F.C.I. by his letter dated 12-1-90 requested the Senior Regional

Manager, F.C.I., Patna and the authorities of Head Quarter to regularised the service of the concerned workman who is being kept as casual typist only with the object of avoiding its regularisation in service, payment of wages and other benefits at par with regular typist. The action of the management is highly unjustified and is a clear case of unfair labour practice. In the circumstances, the union has prayed that the concerned workman be regularised in service with effect from 1-3-1985 with the seniority in service, confirmation in service and wages according to the scale.

4. In rejoinder to the written statement of the sponsoring union, the management has alleged that the concerned workman was engaged as casual typist by the District Manager, F.C.I., Muzaffarpur without obtaining prior approval of the Regional Manager, F.C.I., Patna. After filling in five permanent posts of typists in 1985 there was no requirement for a casual typist. He was engaged under suspicious circumstances. The persons named at para 3 of the written statement of the union passed the typing test and were cleared in the interview for their employment as regular typists. The concerned workman miserably failed in the typing test and could not be employed as a regular typist. The management has denied that the concerned workman and the regular typists are doing similar and identical jobs. Taking dictation in long hand and typing at a speed more than 40 words per minute is not the same thing as typing copies from other documents at a very low speed with a large number of mistakes in a casual manner. The concerned workman being a casual typist, his job is casual typing and rest of the period being employed by him for his practice for increasing efficiency and speed. He gets all the facilities according to the conditions of service applicable to a casual workman. It is absurd to suggest that he is doing better or even more than a regular typist. His demand for regularisation in service and scale of pay at par with regular typist with effect from 1-3-1985 is without any basis.

5. In rejoinder to the written statement of the management, the union has stated that the C.B.I., Patna registered a case against the authority for making irregular appointment in 1984 and 1985 and the disciplinary proceeding is also pending against the officer of the management. All the typists appointed by the management during the years 1984 and 1985 were discharged from service on the ground of unsuitability and therefore it is obvious that the concerned workman was not considered for appointment in 1984 due to naked favouritism. The concerned workman requested the District Manager, F.C.I., Muzaffarpur to give him an opportunity to serve the Corporation as typist. Since there was heavy pressure of typing work the District Manager after taking typing test engaged the concerned workman as a typist on 1-3-85 and requested the Senior Regional Manager to convey his approval. The concerned workman has been working in the District Office, Muzaffarpur since 1-3-1985 without any break and to fullest satisfaction of his superior. It is alleged that the management with an intention to pay less wages and also to avoid regularisation of the casual workman has adopted a policy to keep all the casual workmen unregularised so that they may be deprived from pay and all other benefits at par with regular workmen. The concerned workman has been performing his typing work properly and correctly to the satisfaction of his superior. There is documentary evidence to show that his work and performance is excellent and he is quite suitable for the post of typist. He has acquired sufficient speed and knowledge in English typing. He has been performing the duties of a regular typist. Hence, he is entitled to be regularised in service with full benefits.

6. The management, in order to justify its action, has examined MW-1 Shamsundar Roy, formerly working as Asstt. Manager (Personnel) of Food Corporation of India, Regional Office at Patna and MW-2 H. L. Prasad posted at Regional Office of Food Corporation of India, Patna and laid in evidence a mass of documents which have been marked Exts. M-1 to M-7.

On the other hand, the union has examined WW-1 Mithilesh Kumar Verma, the concerned workman and WW-2 Bapirath Prasad Singh, working in the District Office of

Food Corporation of India, Patna and holding the post of State Joint Secretary of Executive Staff Union, Food Corporation of India and laid in evidence some documents which have been marked Exts. W-1 to W-5.

7. It is irreconcilable position that Mithilesh Kumar Verma son of B. N. P. Verma, Asstt. Manager (Movt.), has been working as casual typist in the District Office of F.C.I., Muzaffarpur since 1-3-1985. The District Manager of District Office of F.C.I., Muzaffarpur issued a letter of appointment dated 21-3-85 (Ext. W-1) to the concerned workman with a copy to the Sr. Regional Manager, F.C.I. Regional Office, Patna for approval of engagement of the concerned workman as casual typist. MW-1 Shamsundar Ray was working as Asstt. Manager (Personnel) of F.C.I. at Regional Office, Patna, from February, 1986 to 4-12-1991. He has stated in his evidence that the appointment letter discloses that a copy of this letter was endorsed to Sr. Regional Manager, Patna, for according approval, but they did not get that endorsed copy at Patna office. He has admitted that at the time when the letter was addressed to Patna Office, he was not posted here and in fact, he was posted at Purnia office. The management has not produced any record to show that the copy of the letter did not reach the Sr. Regional Manager, F.C.I., Patna. In the circumstances, the statement of Shri Ray, according to me, is nothing but an attempt to dilute the position emerging from the letter of appointment.

8. Anyway, the fact is that the management published advertisement in the news paper including 'Search Light' inviting applications from the candidates for appointment to the post of typists and stenographers in July 1984 (Exts. M-1 to M-14). The concerned workman submitted an application dated 25-7-84 for the post of typist (Ext. M-2). He passed Intermediate examination in science from the University of Bihar, Muzaffarpur (Ext. M-4) and submitted certificate in support of his having English typing speed of 45 words per minute and Hindi typing speed of 40 words per minute (Ext. M-4). It appears that he appeared in the typing test on 16-12-84 but could not come out successful. Thereafter he was appointed as casual typist in the District Office of F.C.I., Muzaffarpur by the District Manager by letter of appointment dated 21-3-85.

9. In answer to the claim of the sponsoring union and the concerned workman for regularisation of service of the concerned workman, confirmation in service, seniority and other consequential benefits, the case of the management is that the concerned workman could not be considered for regularisation as he is not capable of taking dictation in long hand and typing the same correctly as the regular typists are required to do and that he is not capable of typing 40 words per minute in English typing correctly and that he is not required to devote his entire time for doing typing job as he is a casual typist. In other words, the duties of the concerned workman are not comparable to those of a regular typist. The union has asserted that the concerned workman has been performing the same and identical jobs as the regular typists are performing.

The claim of the management that the regular typists are required to take dictation in long hand and to type the same correctly is not supported by any evidence at all. The advertisement published by the management in news paper discloses the qualification for appointment as regular typist which is as follows :

Qualification.—Matriculate or equivalent with typing speed of 40 words per minute in English.

In support of its contention that performance of the concerned workman is not upto the mark, the management has submitted special performance report allegedly of the concerned workman for the period from 1-1-90 to 31-12-90 and 1-1-91 to 31-1-91 (Exts. M-7 and M-71). Assessment of performance of the concerned workman, as per these reports, stands as follows :-

'Poor, unsatisfactory and inadequate'

'Very poor and unsatisfactory'.

According to MW-1 Shamsundar Ray, these reports are signed by A. K. Saksena, District Manager, F.C.I., Muzaffarpur.

pur. In cross-examination Shri Ray has admitted that special performance report in official parlance is meant for Class-IV staff. Shri Ray has voluntarily stated that the management as and when required may obtain special performance report in respect of Class-III staff. The management has not submitted the relevant Regulation in order to support the statement of Shri Ray that the management may obtain special performance report in respect of Class-III staff. On the other hand, MW-2 H. L. Prasad, who joined the Regional Office, F.C.I., Patna in September, 1988 as Regional Manager and worked there till 12-7-91, has stated that he never directed his subordinate to write down C.C.R./P.R. in respect of the concerned workman nor did he file any such report in respect of the concerned workman himself. In this connection, the letter dated 12-1-90 (Ext. W-2) written by A. K. Saxena, District Manager, F.C.I., Muzaffarpur to H. L. Prasad, Regional Manager, F.C.I. Regional Office, Patna-1 is poignant and illuminating. The letter is re-produced hereinbelow :

"Kindly refer to your D.O. letter No. Esstt.30 (18)/86 dated 21-10-89, regarding un-authorised engagement of one Casual Typist Sri Mithilesh Kumar Verma. In this connection, it is stated that as per our records available in this office, it appears that Sri Verma was engaged as Casual Typist w.e.f. 01-03-85 on daily basis as admissible to him vide this office order No. Estt-3(1)/84 dated 21-3-85 and he has allowed to work till date, it reveals from our records that Sri Verma has not appeared for Typing test at Regional Office, FCI, Patna.

As regards, payment of wages, he has been paid w.e.f. 1-3-1985 till date for utilisation of his service for Typing official papers with full satisfaction. The details position about Sri Verma has already been forwarded to you vide this office letter No. Estt-4 (15)/88-89 dated 21-7-88, wherein this office has requested for regularisation of his service. He is sincere worker."

As regards, payment of wages, he has been paid w.e.f. 1-3-1985 till date for utilisation of his service for Typing official papers with full satisfaction. The details position about Sri Verma has already been forwarded to you vide this office letter No. Estt-4(15)/88-89 dated 21-7-88, wherein this office has requested for regularisation of his service. He is sincere worker."

From this letter it appears that the District Manager by letter dated 21-7-88 requested the Regional Office at Patna for regularisation of the service of the concerned workman. Shri Saxena, District Manager, has certified that the concerned workman is a sincere worker. Considering this document and other evidence on record, I have no hesitation to hold that the special performance reports in respect of the concerned workman are inspired documents which have been brought into being in order to whittle down the case of regularisation of the concerned workman.

10. The next plank of the case of the management is that the concerned workman has not been performing the same nature of duties as regular typists are performing. The management has not laid any positive evidence in this matter. The concerned workman, when asked in cross-examined, has asserted that he is having typing speed of 45 words per minute and that he has not been doing the job of typing copies only. According to him, he has been doing the same nature of job as the regular typists are doing. According to WW-2 Bhagirath Prasad Singh, who is posted in District Office, F.C.I., Patna as Gr. II Ministerial Staff, the duties and job description of regular typists and casual typists are the same. Shri Saxena's letter dated 12-1-1990 (Ext. W-2) discloses that the concerned workman was recommended for regularisation in service and that he is a sincere worker. It must be pointed out here that the concerned workman has been posted in the district office at Muzaffarpur and Shri Saxena was his superior officer. As per assessment of Shri Saxena, the concerned workman is suitable for being regularised in service. Hence, a reasonable inference can be drawn that the concerned workman has been doing the job of a regular typist in his establishment. Hence, I over-rule

the contention of the management that the concerned workman has not been performing the job of a regular typist.

11. Ultimate contention of the management is that there existed no vacancy for regular typist since 1985. But this contention is devoid of any merit as the management has not filed any document to support its contention. On the other hand, the union has submitted a photo copy of statement showing sanction/existing and vacancy position as on 30-11-1988. This statement discloses that there were as many as 36 vacancies in the post of English Typist.

12. Over the years since 1-3-1985 the concerned workman has been working as casual typist in the District office of F.C.I. Muzaffarpur. He has been performing the same nature of job as regular typists have been performing. There existed vacancies in the post of regular typists as on 30-11-88. Prior to that Shri Saxena referred to the letter of his office dated 21-7-88 wherein the concerned workman was recommended for regularisation in service. In the circumstances, I come to the conclusion that the concerned workman, working as daily-rated casual worker since 1-3-85 is entitled to be regularised in service with effect from 21-7-88 when the District office, Muzaffarpur recommended his regularisation in service as regular typist. Since the concerned workman is agreeable to appear in typing test, the management may hold such test for his confirmation in service within a period of six months from the date of publication of the award.

13. Accordingly, the following award is rendered—the action of the management of Food Corporation of India in denying to the concerned workman payment of wages in the time scale of F.C.I. and his regularisation in service is not justified. The management is directed to regularise him in service with effect from 21-7-1988 and to pay him difference of wages, and other consequential benefits as available to regular workmen. The management is at liberty to hold typing test of the concerned workman for his confirmation in service within a period of six months from the date of publication of the award.

In the circumstances of the case, I award no cost.

[No. L-2012/10/88-D.III(B)]

S. K. MITRA, Presiding Officer

नंद दिल्ली, 1 दिसम्बर, 1992

का. आ. 3151.—औद्योगिक विवाद प्रतिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार एसोसिएटेड स्टोन इंडस्ट्रीज (कोटा) लिमिटेड रामगंगमण्डी के बन्धर्व के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्विष्ट औद्योगिक विवाद में औद्योगिक अधिकारण, कोटा राजस्थान) के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-12-92 को प्राप्त हुआ था।

[संदर्भ नं. 29012/10/88 - ई -III (बी)]

बी. एम. डेविड, ईस्ट अधिकारी

New Delhi, 1st December, 1992

S.O. 3151.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Kota (Rajasthan) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Associated Stone Industries Kota Ltd. Ramganjmandi and their workmen, which was received by the Central Government on the 1-12-92.

[No. L-29012/10/88-D.III(B)]

B. M. DAVID, Desk Officer

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण, कोटा/गज.

निर्देश प्रकरण क्रमांक: ओ. न्या. (केन्द्रीय)–2/1988

दिनांक स्थापित: 28-3-88

प्रसंग: भारत सरकार, अम मंत्रालय का आदेश संख्या एन-29012/10/88-इ-III (बी) दिनांक 14-3-88

औद्योगिक विवाद अधिनियम, 1947

प्रथम

कैलाणन्दन द्वारा कोटा स्टोन मजदूर यूनियन (गज. सीटु) रामगंज मंडी, जिला कोटा।

—प्रार्थी अमिक

एवं

मैमसं एमोमियेटेड स्टोन इंडस्ट्रीज (कोटा) लिमिटेड, रामगंज मण्डी।

—प्रतिपक्षी नियोजक

उपस्थित

श्री जगदीश नारायण शर्मा,
आर. एच. जे. एम.

प्रार्थी अमिक की ओर से प्रतिनिधि: श्री दिनेशराध द्विवेदी प्रतिपक्षी नियोजक की ओर से प्रतिनिधि: श्री वी. के. जैन अधिनियंत्रिक दिनांक: 16 नवम्बर, 1992

अधिनियंत्र

भारत सरकार, अम मंत्रालय द्वारा विस्तृत निर्देश औद्योगिक विवाद अधिनियम, 1947 (जिसे तत्पुरान्त “अधिनियम 1917” से संबोधित किया जायेगा) की घारा 10 (1) (ष) व उपधारा (2-क) के अन्तर्गत इस न्यायाधिकरण को अधिनियंत्रित किया गया है:—

“Whether the action of the management of M/s. Associated Stone Industries (Kota) Ltd., Ramganjmandi, Distt. Kota in dismissing Shri Kailash Chand, Munshi w.e.f. 16-7-87 is justified. If not, what relief is the workman entitled to?”

2. निर्देश न्यायाधिकरण में प्राप्त होने पर दर्ज रजिस्टर किया गया व पक्षकारों को मूलना आरी की गयी। प्रार्थी अमिक कैलाणन्दन ने अपने क्लेम स्टेटमेंट में कहा है कि मैं, एमोमियेटेड स्टोन इंडस्ट्रीज (कोटा) लिमिटेड, रामगंजमंडी (जिसे तत्पुरान्त “प्रतिपक्षी नियोजक” से संबोधित किया जायेगा) के यहां मूर्शी के पक्ष पर कार्यरत था। प्रतिपक्षी ने प्रार्थी को 22-6-87 को एक आरोप पक्ष दिया जिसका जवाब प्रार्थी ने यथा समय पेश कर दिया। इसके पश्चात जारी दि. 13-7-87 के द्वारा जांच अधिकारी आर. एम. शर्मा ने स्थायकर्तित जांच पूरी की व नदुपरान्त प्रार्थी अमिक को 16-7-87 से सेवामूक कर दिया। क्लेम में आगे कहा गया है कि वह जांच एक नाटक मात्र था जिसमें जांच अधिकारी ने नियमों की खलकर अवहेलना की। प्रार्थी अमिक को अपना पक्ष स्पष्ट करते का मोका नहीं दिया गया। जांच अधिकारी ने प्रति पक्षी के प्रसाव में प्रार्थी पर दबाव डाला और जांच कार्यालयी के रूप में पता नहीं क्या-क्या लिख डाला। जांच अधिकारी ने प्रार्थी में कहा कि तुम्हारे विद्वन् ऐसा कोई बड़ा आरोप नहीं है मुझे माफ कर देंगे तुम दम्भवत कर दो और जांच अधिकारी के इस तरह के व्यवहार को देखने हुए। प्रार्थी ने

कार्यालयी पर हस्ताक्षर कर दिये। इसके अतिरिक्त प्रार्थी को जो इण्ड दिया गया वह अत्यधिक है और जो आराम प्रार्थी के विलङ्घणे से देखते हुए उसे सेवा मूक किया जाने का दण्ड नहीं दिया जाना चाहिए। प्रार्थी के बार-बार मांग किये जाने पर भी जांच कार्यालयी तथा संबंधित दस्तावेज को नक्ल नहीं दी गई। इन परिस्थितियों में प्रार्थी को बरबद्यास्त किये जाने की कार्यालयी न्यायांचित नहीं कही जा सकती और वह पिछले सम्पूर्ण वेतन भहित पुनः सेवा में आने का अधिकारी है।

3. प्रतिपक्षी नियोजक की ओर से जवाब में कहा गया है कि प्रार्थी उनके यहां मूर्शी के पक्ष पर काम करता था और उसको सेवाएं 16-7-87 के द्वारा समाप्त कर दी यह सत्र है। अमिक को 22-6-87 को एक आरोप पक्ष दिया गया था। इस आरोप पक्ष का स्वरूपीकरण अमिक ने 25-6-87 को दिया और उस स्वरूपीकरण में अमिक ने अपने ऊपर लगाये गये आरोप को स्वीकार किया। आरोप दि. 22-6-87 के संदर्भ में जांच किये जाने हेतु आर. एम. शर्मा को जांच अधिकारी नियुक्त किया गया था। यथापि जांच की कोई आवश्यकता नहीं थी क्योंकि प्रार्थी द्वारा अपने हस्तावत के देखने के दौरान लगाये गये आरोप को स्वीकार कर लिया था, फिर भी प्राकृतिक न्याय के नियमों के अनुसार जांच की गयी। अमिक द्वारा आरोप स्वीकार करते के बाद अमिक के अयात भी लिये गये और फिर जांच कार्यालयी समाप्त की गयी और अमिक का पिछला सेवाभिनेष्ट देखने के उपरान्त उस पर विचार करते के पश्चात् उसे सेवा मुक्त करने का दण्ड दिया गया। जांच अधिकारी द्वारा प्रार्थी पर कोई दबाव नहीं डाला गया, न ही उसे कोई ऐसा आपावासन दिया गया कि जांच कार्यालयी पर दस्तक कर दो तुम्हें माफ कर दिया जायेगा। अमिक को सेवाभिनेष्ट का जो दण्ड दिया गया वह उसके पिछले सेवाभिनेष्ट को देखने के पश्चात किया गया क्योंकि उपरान्त के सेवाभिनेष्ट उसके आरोप की गुरुता को कम करते में सहायक नहीं था। सेवामूक्ति आदेश अनुशासनात्मक वृष्टि से उचित था क्योंकि अनशासन उपरान्त में एक रीढ़ की दृष्टि है। प्रतिपक्षी ने अमिक के पिछले सेवाभिनेष्ट के संबंध में कहा है कि अमिक को आरोप पक्ष सं. 5113 दिनांक 21-9-84 द्वारा आरोपित किया जाकर पक्ष सं. 5203 दि. 27-9-84 द्वारा चेतावनी एवं नियन्त्रण स्वरूप मेर हाजिरी लगाये गये, पक्ष सं. 21/53/18-2-85 दिया जाकर पक्ष संख्या 2261/25-2-85 द्वारा सज्जन चेतावनी दी गयी, पक्ष सं. 4862/9-8-85 द्वारा आरोपित किया जाकर पक्ष संख्या 4910/16-8-85 द्वारा चेतावनी देकर 6 दिन नियन्त्रण का दण्ड दिया गया, पक्ष सं. 40/5-10-85 एवं 201/18-10-85 दिया जाकर पक्ष संख्या 1300/9-12-85 द्वारा चेतावनी देकर एक दिन का नियन्त्रण गैर हाजिरी स्वरूप किया गया, पक्ष सं. 3166/25-4-86 दिया जाकर पक्ष सं. 3362/3-5-86 द्वारा सज्जन चेतावनी दी गयी, पक्ष सं. 2410/25-2-86 दिया जाकर पक्ष सं. 2460/28-2-86 द्वारा चेतावनी देकर 6 दिन का नियन्त्रण का दण्ड दिया गया, पक्ष सं. 1435/6-1-87 को दिया जाकर पक्ष सं. 1548/15-1-87 द्वारा सक्त चेतावनी दी गयी व पक्ष सं. 2303/7-3-87 दिया जाकर पक्ष सं. 2760/10-4-87 द्वारा दो दिन के नियन्त्रण गैर हाजिरी स्वरूप देकर चेतावनी दी गयी। इसके अलावा पहले भी प्रार्थी को अपने वारच्छ लागों के साथ गाली-गलोच और मार्गोट करते के मामते में कंपनी के पक्ष दि. 9-1-2-80 के द्वारा आरोपित किया गया था और इण्ड के रूप में उसे 7-12-80 से 16-12-80 तक नियन्त्रण कर, दण्ड दिया गया था और इस नियन्त्रण काल का कोई अतिन भी नहीं दिया गया था। इस प्रकार अमिक के विरुद्ध लगाये गये आरोप को जांच की आराम प्रार्थी ने अनुशासन कायम रखने के लिए उचित रूप से सेवामूक्ति के दण्ड से दण्डित किया गया है जिसमें न्यायिक रूप से कोई हमत्क्षेप नहीं किया जाना चाहिए।

4. दिनांक 30-10-90 की आदेशिका में स्पष्ट वर्णन है कि प्रार्थी अमिक के विवाद प्रतिदिन ने “वरेलू जांच की औचित्यता” के बारे में आरोपों पर जोर नहीं दिया और

इस आदेशिका के द्वारा घरेलू जांच को उचित माना गया और उसके पश्चात यह प्रकरण धारा 11-ए अधिनियम, 1947 के बिन्दु पर बहस हेतु रखा गया।

5. दोनों पक्षों के विदान प्रतिनिधिगण की बहस मुनी गयी व पलावली तथा समस्त उपलब्ध अभिलेख व प्रस्तुत न्यायिक दृष्टिओं का सामान्य रूप से अवलोकन किया गया।

6. जब जांच कार्यवाही को सिद्ध भान लिया गया है तो अब केवल इसी बिन्दु पर विचार करना है कि क्या पलावली पर उपलब्ध अभिलेख के आधार पर अभिक के विरुद्ध लगाया गया आरोप सिद्ध भान जा सकता है अथवा क्या जांच कार्यवाही के निकर्ष के अनुमान अभिक के विरुद्ध जो आरोप लगाया गया उसमें जांच अधिकारी ने सही निष्कर्ष निकाला है तथा दूसरा बिन्दु यह है कि क्या प्रकरण की परिस्थितियों में अभिक के मेवामुक्ति के आदेश में इस न्यायालय द्वारा कोई हस्तक्षेप किया जाना चाहिए? इस सम्बन्ध में 22-6-87 का वह आरोप-पत्र महत्वपूर्ण प्रलेख है जिसके अनुमान इस अभिक को आरोप-पत्र दिया गया था। यह आरोप-पत्र निम्न प्रकार है:—

“श्री कैलाशचन्द्र आत्मज तन्दलाल, मुशी, 22-6-87
खान-सातलग्बेड़ी।

रिपोर्ट आई है कि आपको ड्यूटी दि. 19-6-87 को खान पर ट्रक गिनते के लिए लगा रखी थी, उक्त दिनांक को खान के सुपरवाईजर और फोरमैन द्वारा चैक करने पर पाया गया कि आप अपनी ड्यूटी पर उपस्थित नहीं थे, आपको इसमें पूर्व भी अपने कार्य में लापरवाही बरतने के कारण कंपनी के पत्र सं. 2153 दिनांक 18-2-85, कंपनी के पत्र सं. 40, दिनांक 5-10-85 व 201 दि. 18-10-85 3166 दि. 25-4-86, 2410-दि. 25-2-86, 1435 दिनांक 6-1-87 और 2303 दिनांक 7-3-87 के नोटिस दिये गये थे।

इस प्रकार गमय-समय पर अपनी ड्यूटी से गैरहाजिर रहने व बिना इजाजत लिये अपनी ड्यूटी से गयव होना आपने एक आदत सी बना ली है।

उपरोक्त तथ्यों से याक जाहिर होता है कि आप जानवृक्षकर कंपनी का अनुशासन भंग करने के आई हो चुके हैं, आपका उक्त कृत्य कंपनी के स्थाई आदेशों की धारा 18 (1) (4) (7) (10) (31) के अन्तर्गत एक गंभीर

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इस सम्बन्ध में 2 दिन के अन्दर-अन्दर अपना लिखित स्पष्टीकरण कंपनी के कार्यालय में प्रस्तुत कर बताये कि क्यों नहीं प्राप्तके विरुद्ध नियमानुसार मूल कार्यवाही की जावे।

यदि आपके मामले की जांच कार्यवाही का नाम न्यायोचित समझा गया तो जांच अधिकारी के नाम,

जांच के स्थान, दिनांक, समय की सूचना आपको दे दी जावेगी।

प्रति-वान सातलग्बेड़ी

हस्ता/-

जनरल मैनेजर (माइन्स)

23-6-87

7. “इस पत्र का जो जाव बताया गया है वह पलावली पर उपलब्ध नहीं है।” दिनांक 13-7-87 को इस आरोप के सम्बन्ध में अभिक कैलाशचन्द्र से पूछताछ को गयी। जांच कार्यवाही की आदेशिका से स्पष्ट होता है कि अभिक कैलाशचन्द्र ने अपने विरुद्ध लगाये गये आरोपों को स्वीकार किया। दिनांक 13-7-87 की आदेशिका में अभिक वर्णन है कि जांच अधिकारी के द्वारा अभिक से पूछा गया कि क्या उसे आरोप स्वीकार है और उसने अर्थात अभिक ने बताया कि उसे आरोप स्वीकार है। इसके पश्चात अभिक कैलाशचन्द्र मंशी का जांच अधिकारी द्वारा बताने भी नियम गया जोकि निम्न प्रकार है:—

“मैं दिनांक 19-6-87 को खान सातलग्बेड़ी ऑफिस घर से आमद लेकर अपनों ड्यूटी पर भाग नं. 4-5 दोनों के लिए निकाला या परन्तु मुझे रास्ते। मैं ड्यूटी पर जाते समय मेरे रिफ्लेक्टर मिल गये थे, अतः मैं उनके साथ चायपानी पीने लग गया जिसमें मैं मेरी ड्यूटी पर 10 बजे पहुंच पाया एवं इसमें पूर्व माइन्स मैनेजर सा. ने एस्ट्रिया में पहुंचकर मूल चैक कर लिया व मेरे को ड्यूटी स्थल पर नहीं पाया उक्त मामले में ड्यूटी स्थल पर समय पर नहीं पहुंचने के मामले में मेरी गलती को स्वीकार करता हूँ व भवित्व में ऐसी गलती नहीं कहांग। इसके अलावा भी मेरे खिलाफ कंपनी पत्र संख्या 3614 दिनांक 22-6-87 द्वारा जो आरोप लगाये हैं उन्हें मैं स्वीकार करता हूँ।”

हस्ता/-

कैलाशचन्द्र

13-7-87”

8. इस प्रकार आरोप-पत्र में अभिक के विरुद्ध न केवल 19-6-87 की घटना के आरोप के सम्बन्ध में उल्लेख है जिसमें यह वर्णन है कि 19-6-87 को अभिक को ड्यूटी खान पर ट्रक गिनते के लिए लगा रखी थी और खान के सुपरवाईजर और फोरमैन ने चैक करने पर यह पाया कि अभिक प्रार्थी ड्यूटी पर उपस्थित नहीं था। आरोप-पत्र में इस आरोप के अतिरिक्त पूर्व की 7 तारीखों के सम्बन्ध में भी स्पष्ट वर्णन है कि पूर्व की 7 तारीखों पर भी कार्य में लापरवाही बरतने के कारण कंपनी के पत्रों द्वारा अभिक को नोटिस दिये गये थे। आरोप-पत्र में यह भी वर्णन है कि समय-समय पर ड्यूटी से गैरहाजिर रहने और बिना अनुमति छुट्टी से गैरहाजिर रहने अभिक ने अपनी आदत बना ली है। इसके सम्बन्ध में अभिक ने अपने बयान में

कहा है कि वह अपनी गलती को स्वीकार करता है और भवित्व में गलती नहीं करेगा। श्रमिक ने अपने वयान में यह भी कहा है कि इन आरोप-पत्र दिनांक 22-6-87 के द्वारा जो आरोप लगाये हैं उन्हें वह स्वीकार करता है।

9. इस सम्बन्ध में श्रमिक के विडान प्रतिनिधि ने तर्क देते हुए कहा है कि इस श्रमिक को जब आरोप-पत्र दिया गया तो उसने केवल अपनी गलती 19-6-87 की लापरवाही के सम्बन्ध में ही स्वीकार की है और जब श्रमिक ने आपने वयान में अपनी गलती स्वीकार की तो अपनी मसुर्ण भूत-काल का गलता स्वीकार करने की उसकी इच्छा नहीं थी और कदाचित उसको यही पता था कि उसके बिन्दु 19-6-87 की इयूटी की लापरवाही के सम्बन्ध में ही जांच की जा रही है। इस सम्बन्ध में अपने को नेतृत्व में भी श्रमिक ने यह कहा है कि जांच अधिकारी ने उसे कूठा आश्वासन देकर उसके इसाथत करवा लिये थे। परन्तु श्रमिक के विडान प्रतिनिधि का यह तर्क स्वीकार किये जाने योग्य नहीं है क्योंकि स्वयं श्रमिक के विडान प्रतिनिधि ने ही घरेलू जांच की अंतिमता के बारे में लगाये गये किसी आरोप पर जोर नहीं दिया और इमलिए घरेलू जांच को उचित माना गया जैसा कि इस न्यायालय की आदेशिका दिनांक 30-10-90 में स्पष्ट वर्णन है। अतः अब उनकी तरफ से यह तर्क स्वीकार किये जाने योग्य नहीं है कि श्रमिक को धोखा देकर या बरगताकर या उस अधिकारी में रखकर आरोप-पत्र के सम्बन्ध में उसके हांग गलती स्वीकार कर लेना लियवाया हो थोंग श्रमिक ने आरोप-पत्र में लिखे तथ्यों को स्वीकार न किया हो। श्रमिक ने आपने वयान में जिसका कि ऊपर वर्णन किया गया है, स्पष्ट रूप में यह स्वीकार किया है कि उसे अपनी गलती स्वीकार है। आरोप-पत्र में स्पष्ट वर्णन है कि श्रमिक को इसके गर्व भी मात्र अलग पत्तों जो अलग-अलग तारीखों पर दिये गये उन्हें स्पष्ट किया हुआ है कि वह अपना कार्य शब्दी तरह नहीं कर रहा है और इयूटी की लापरवाही से करता है। आरोप-पत्रों में यह भी स्पष्ट वर्णन है कि यह अपनी इयूटी में गैरहाजिर रहता है और इयूटी में गायब होना उसने अपनी आदत बना ली है। इन समस्त बातों को श्रमिक ने अपने वयान में स्वीकार किया है। अपने वयान में श्रमिक ने कहा है कि 19-6-87 को आरोप के अलावा आरोप-पत्र में जो और आरोप लगाये गये हैं उन्हें वह स्वीकार करता है। श्रमिक विल्कुल पढ़ा लिया न हो यह भा कहीं श्रमिक का कथन नहीं है। अतः जहां तक आरोप-पत्र में लगाये गये आरोपों का प्रश्न है, उन्हें श्रमिक ने स्वीकार किया है।

10. प्रतिपक्षी नियोजक पक्ष की ओर से इस प्रकरण में इस श्रमिक के आचरण के सम्बन्ध में पूर्व के कुछ दस्तावेज प्रस्तुत किये गये हैं जिसका विवरण निम्न प्रकार है:—

1. आरोप-पत्र सं. 798/9-12-80 के आरोप में 7-12-80 से 16-12-80 तक निलम्बन का दण्ड दिया गया जो और वेतन नहीं दिया गया;

2. आरोप-पत्र नं. 5113/21-9-84 के आरोप में चेतावनी पत्र निलम्बन स्पष्ट गैरहाजिर लगाया गयी;
3. आरोप-पत्र सं. 2153/18-2-85 के आरोप में सभ्ल चेतावनी दी गयी;
4. आरोप-पत्र नं. 4862/9-8-85 के आरोप में चेतावनी व 6 दिन के निलम्बन का दण्ड दिया गया;
5. आरोप-पत्र सं. 40/5-10-85 व 201/18-10-85 के आरोपों में जेनायती व एक दिन का निलम्बन गैरहाजिर स्पष्ट किया गया;
6. आरोप-पत्र सं. 3166/25-4-86 के आरोप में सभ्ल चेतावनी दी गयी;
7. आरोप-पत्र नं. 2410/25-2-86 के आरोप में चेतावनी व एक दिन के निलम्बन का दण्ड दिया गया;
8. आरोप-पत्र सं. 1435/6-1-87 के आरोप के सम्बन्ध में सभ्ल चेतावनी दी गयी;
9. आरोप-पत्र सं. 2303/7-3-87 के आरोप में दो दिन का निलम्बन गैरहाजिर स्पष्ट देकर चेतावनी दी गयी।

11. इन दस्तावेजों में प्रतिपक्षी नियोजक ने यह कहते की चेष्टा की है कि इस श्रमिक का आचरण आरम्भ से ही अपनी इयूटी के प्रति लापरवाही व गैरहाजिर का रहा है जिसमें प्रबन्धक को हमेशा हाति रही है। इन दस्तावेजों के सम्बन्ध में विडान प्रतिनिधि श्रमिक ने “1981 लेब. आई.सी. 93-सेक्रेट्री, असम चाय मजदूर संघ, सोनरी त्रान्च बगाम पीठासीन अधिकारी, असम न्यायालय डिब्रुगढ़” को प्रस्तुत किया है जिसमें वर्णन है कि न्यायालय के समक्ष जो प्रकरण लम्बित है उसमें यदि घरेलू जांच को उचित मान लिया जाए तो जो दस्तावेज घरेलू जांच के समय उपलब्ध कराये गये थे या घरेलू जांच को पत्रावली पर मौजूद थे उन्हीं के आधार पर न्यायालय को लम्बित प्रकरण में विवादित विन्दु का निष्कर्ष निकालना चाहिए और न्यायालय को कोई नयी माध्यम लेने का अधिकार नहीं है। उनके तर्क का यह अभिप्राय है कि जो दस्तावेज प्रबन्धक नियोजक की ओर से इस न्यायालय में पेश किये गये हैं और जो घरेलू जांच की पत्रावली पर उपलब्ध नहीं थे उन पर सजा का विन्दु मुनिश्चित करते समय विचार नहीं किया जा सकता। इसी प्रकार सजा के विन्दु पर “1987” लेब. आई.सी. 685-विजयकुमार सुलजीसाई जलानी बनास गुजरात स्टेट रोड ट्रांसपोर्ट कोरपोरेशन, राजकोट” भी प्रस्तुत किया गया है जिसमें वर्णन है कि अधिनियम, 1948 की धारा 11 प्र के अन्तर्गत दण्ड को गुनिश्चित करते समय न्यायालय को यह देखना चाहिए कि श्रमिक के विन्दु

जो आरोप मिछ है उस आरोप के अनुपात में ही उस श्रमिक को दण्ड मिले और यदि श्रमिक को दिया गया दण्ड आरोप की तुलना में अत्यधिक और पीड़ादायक हो तो न्यायालय को उसमें हस्तक्षेप करके दण्ड की मात्रा कम करनी चाहिए। इस दृष्टिंत प्रकरण में श्रमिक दो दिन ड्यूटी से गैरहाजिर रहा था और इन दो दिन की छुट्टी का प्रार्थना पत्र भी उसका अस्वीकार कर दिया गया था और उन परिस्थितियों में अम न्यायालय ने श्रमिक को 50% पुराने वेतन सहित सेवा में बहाल करने का आदेश दिया था, परन्तु इस दण्ड को भी माननीय उच्च न्यायालय ने अधिक माना और श्रमिक की केवल दो वेतन बृद्धि रोकने का दण्ड ही उसके आरोप को देखते हुए काफी माना। इन निर्णयों पर ध्यान दिलाते हुए विद्वान प्रतिनिधि श्रमिक पक्ष का तर्क है कि श्रमिक के विश्वद्व जो घरेलू जांच की गयी थी उसमें उसका आंशिक रूप से दोष तो भिन्न होता है परन्तु वह इनका अधिक नहीं है कि उसे सेवामुक्ति का बण्ड दिया जावे। इस तर्क का विरोध करते हुए विद्वान प्रतिनिधि प्रतिपक्षी ने कहा है कि जो भी सामग्री इस वर्तमान प्रकरण की पताकाली पर उपलब्ध है उससे यह स्पष्ट है कि इस श्रमिक के विश्वद्व जो आरोप लगाया गया था वह उसने स्पष्ट रूप से स्वीकार किया है तथा उसने अपने पूर्व के आरोपों को भी स्वीकार किया है, इन समस्त बातों से यह सिद्ध है कि यह श्रमिक लगातार बहुत समय तक काम पर नहीं आने के दुराचरण का दोषी रहा है और उसके विश्वद्व यह न्यायालय कोई भी नरम रुब नहीं अपना सकती। उनका तर्क है कि आरोप पत्र दिनांक 22-6-87 में समस्त पत्रों के नम्बर और तारीखें अंकित की गयी हैं जिसमें स्पष्ट वर्णन किया गया है कि पूर्व में भी इस श्रमिक को 7 बार दुराचरण के नोटिस दिये जाकर उनमें श्रमिक को चेतावनी और निलम्बन तक की मजा दी गयी है और अपने बयान में श्रमिक ने स्पष्ट स्वीकार किया है कि उसके विश्वद्व आरोपपत्र में जो आरोप 19-6-87 को ड्यूटी की लापरवाही के मम्बन्ध में लगाया गया वह स्वीकार करता है तथा इस आरोप पत्र में जो अन्य आरोप लगाये गये हैं उनको भी वह स्वीकार करता है। जब उसने अपने बयान में इन सभी आरोपों को स्पष्ट रूप से स्वीकार किया है तो फिर उसका पूर्व का आचरण भी स्वयं मिछ हो जाता है और यह सिद्ध हो जाता है कि वह एक आदतन ड्यूटी से लापरवाही बरनने वाला श्रमिक है। इन परिस्थितियों में इस श्रमिक के विश्वद्व कोई नरम रुब नहीं अपनाया जा सकता। उन्होंने अपने इस तर्क के समर्थन में “1973 (1) ए.ए.जे. 278 वी बर्कमेन आफ में. फायर स्टोन टायर एंड रबर कंपनी आफ इण्डिया (प्रा.) लि. बनाम प्रबन्धक वर्ग तथा 1990 (1) आर. ए.ए.ल.आर. 611-डी.सी.एम. लि. बनाम अम न्यायालय, कोटा” को प्रस्तुत किया है। 1973 (1) ए.ए.जे. 278 में माननीय उच्चतम न्यायालय ने कहा है कि यदि एक बार यह मिछ हो जावे कि श्रमिक ने दुराचरण किया

है तो प्रबन्धक द्वारा जो भी सजा श्रमिक को दी गयी है उसमें न्यायालय को तब तक हस्तक्षेप नहीं किया जाना चाहिए। जब तक कि न्यायालय इस निष्कर्ष पर नहीं पहुंचे कि सजा बलीकरण (Victimation) के कारण अत्यधिक दी गयी है। इसी प्रकार 1990 (1) आर.ए.ए.ल.आर. 611 में माननीय राज.० उच्च न्यायालय ने कहा है कि जहां कोई श्रमिक आदतन बिना छुट्टी लिये अनुपस्थित हो जावे या छुट्टी पर जाने के पश्चात छुट्टी की अवधि समाप्त होने पर भी अनुपस्थित होता रहे और ऐसा करना उसने अपनी आदत बना ली हो तो ऐसी परिस्थितियों में न्यायालय को प्रबन्धक द्वारा लिये गये सेवामुक्ति के आदेश में हस्तक्षेप नहीं करना चाहिए। विद्वान प्रतिनिधि नियोजक का कथन है कि इस प्रकरण में बिल्कुल स्पष्ट है कि यह श्रमिक आदतन रूप से सेवा से अनुपस्थित और ड्यूटी से गैरहाजिर रहता है इसलिए उसके सेवामुक्ति के आदेश में इन निर्णयों की रोशनी में कोई हस्तक्षेप नहीं किया जा सकता।

12. यदि इस प्रकरण के समस्त तथ्यों को दोनों पक्षों के विद्वान प्रतिनिधिगण द्वारा प्रस्तुत किये गये निर्णयों की रोशनी में देखा जाए तो तथ्यों से यह स्पष्ट हो जाता है कि यह श्रमिक ड्यूटी से गैरहाजिर रहने का आदतन अपराधी रहा है। उसके विश्वद्व जो आरोप-पत्र दिया गया है उसमें समस्त तथ्यों और पत्रों का विवरण है जिनसे यह स्पष्ट है कि पूर्व में भी यह किन-किन तारीखों पर अनुपस्थित रहा है। इन सभी तथ्यों और आरोपों को उसने अपने बयान में स्पष्ट स्वीकार किया है। यदि पूर्व में श्रमिक को दिये गये नोटिसों को और उसको दी गयी सजाओं के दस्तावेजात को न भी देखा जाए, जैसा कि श्रमिक पक्ष के विद्वान प्रतिनिधि का तर्क है कि ये दस्तावेज घरेलू जांच के समय घरेलू जांच की पताकाली पर उपलब्ध नहीं होते थे; कारण तात्त्विक अभिलेख (Material on record) की परिभाषा में नहीं आ सकते, तो भी आरोप-पत्र से तथा प्रतिपक्षी द्वारा क्लेम थे दिये गये जवाब में यह स्पष्ट हो जाता है कि इस श्रमिक का पुराना आचरण किस प्रकार का रहा है। नियोजक पक्ष द्वारा अपने दिये गये जवाब में जो तथ्य अंकित किये गये हैं उनके अनुसार यह श्रमिक विवादित आरोप-पत्र दिये जाने के पूर्व अनुपस्थित और लापरवाह रहा जिमें फलस्वरूप उसे आरोप-पत्र सं. 798/9-12-80 के आरोप में 7-12-80 से 16-12-80 तक निलम्बन का दण्ड व कोई वेतन न देने का दण्ड, आरोप पत्र सं. 5115/21-9-84 के आरोप में चेतावनी व निलम्बन स्वरूप गैरहाजिरी का दण्ड आरोप पत्र सं 2153/18-2-85 के आरोप में महत चेतावनी का दण्ड आरोप पत्र सं. 4862/9-8-85 के आरोप में चेतावनी व 6 दिन के निलम्बन का दण्ड, आरोप-पत्र सं. 40/5-10-85 व 201/18-10-85 के आरोपों में चेतावनी व एक दिन के निलम्बन का दण्ड, आरोप-पत्र सं. 3166/25-4-86 के आरोप में सजा चेतावनी का दण्ड, आरोप-पत्र मंख्या 2410/25-2-86 के आरोप में चेतावनी व एक दिन के

निलम्बन का दण्ड, आरोप-पद सं. 1435/6-1-87 के आरोप में सम्बन्ध में सहत चेतावनी का दण्ड तथा आरोप-पत्र सं. 2303/7-3-87 के आरोप में दो दिन के निलम्बन गैरहाजिरी व चेतावनी का दण्ड दिया जा चुका था। इन तथ्यों का कि उसे इस प्रकार वे दण्ड दिये गये, कोई अण्डन श्रमिक पक्ष की ओर से नहीं किया गया है इसलिए उसके पूर्व के आचरण को देखते हुए श्रमिक को जो सेवामुक्ति का आदेश दण्ड स्वरूप दिया गया है वह माननीय उच्चतम न्यायालय तथा माननीय राज. उच्च न्यायालय के उक्त निर्णयों की रोशनी में हस्तांत्रिक किये जाने योग्य नहीं रहता और उसमें कोई हस्तांत्रिक नहीं किया जाता।

13. उपरोक्त आधारों पर यह स्पष्ट है कि प्रतिपक्षी नियोजक द्वारा श्रमिक की सेवामुक्ति का जो आदेश पारित किया गया है उसमें कोई हस्तांत्रिक नहीं किया जा सकता। परन्तु वहस के दौरान नियोजन पक्ष वे विद्वान प्रतिनिधि ने शालीनतापूर्वक यह प्रस्तावित किया कि यदि इस श्रमिक को नियोजक की ओर से कोई राशि उसके द्वारा नियोजक वे यहां की गयी सेवा को देखते हुए और उसकी गरीब स्थिति पर ध्यान देते हुए दिलायी जावे तो माननीय दृष्टिकोण से उपयुक्त रहेगा। उनके इस प्रस्तावित सुझाव को देखते हुए तथा समस्त परिस्थितियों को देखते हुए श्रमिक को कुल मिलाकर 20,000/- रुपये की राशि प्रतिपक्षी नियोजक से दिलाना उपयुक्त समझा जाता है।

14. उपरोक्त सम्पूर्ण विवेचन के आधार पर भारत सरकार, श्रम मंत्रालय द्वारा सम्प्रेषित निर्देश को इस प्रकार उत्तरित किया जाता है कि प्रबन्धक, मै. एसोसियेटेड स्टोन इण्डस्ट्रीज (कोटा) लि. रामगंज मण्डी जिला कोटा द्वारा श्रमिक कैलाशचन्द मुश्ती को दिनांक 26-7-87 से सेवामुक्त किया जाना उचित है। परन्तु श्रमिक की दयनीय व गरीब स्थितिवश प्रतिपक्षी प्रतिनिधि द्वारा प्रस्तावित सुझावानुसार श्रमिक को प्रतिपक्षी नियोजक से 20,000/- रुपये की राशि दिलायी जानी है।

इस अधिनिर्णय को भारत सरकार, श्रम मंत्रालय को नियमानुसार प्रकाशनार्थ भिजवाया जावे।

जगदीश नारायण शर्मा, न्यायाधीश

नई दिल्ली, 1 दिसम्बर, 1992

का.प्रा. 2152—जीवोपिक विवाद भवितियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टटीकोरिन पोर्ट ट्रस्ट, टटीकोरिन के प्रबन्धतन्त्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट जीवोपिक विवाद में जीवोपिक अधिकारण, नियमानुसार, मध्यम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-11-92 को प्राप्त हुआ था।

[मध्या एल-44012/2/85-डी-IV (ए)]
बी.एम.डेविड उस्क अधिकारी।

New Delhi, the 1st December, 1992

S.O. 3152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Tamil Nadu, Madras as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tuticorin Port Trust, Tuticorin and their workmen, which was received by the Central Government on the 30-11-92.

[No. L-44012/2/85-DIV(A)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Friday, the 26th day of June, 1992

PRESENT :

Thiru N. Gopalaswamy, B.Sc.B.L.,
Industrial Tribunal.

Industrial Dispute No. 73 of 1986

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Tuticorin Port Trust, Tuticorin.)

BETWEEN :

The Secretary,
Tuticorin Port Trust Democratic Staff Union,
Tuticorin-682004.

AND

The Chairman,
Tuticorin Port Trust,
Tuticorin.

REFERENCE :

Order No. L-44012/2/85-D.IV(A), dated 20-10-86 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 10th day of March, 1992 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Miss Anna Mathew, Advocate appearing for the workman and of Tiruvalargal M. Venkatachalam, M. Sriram and S. M. Loganathan, Advocate for the management and this dispute having stood over till this day of consideration, this Tribunal made the following.

AWARD

This dispute between the workman and the Management of Tuticorin Port Trust, Tuticorin arises out a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its order No. L-44012/2/85-D.IV (A), dated 20-10-86 of the Ministry of Labour, for adjudication of the following issue :

“Whether the management of Tuticorin Port Trust is justified in punishing Shri V. Aiykote Raja Valve Operator in the Engineering Department by withholding an increment with cumulative effect. If not to what relief the workman concerned is entitled?”

(2) The Petitioner-Union on behalf of the worker Thiru V. Aiykote Raja alleges in the claim statement as follows : The worker Aiykote Raja, Valve Operator in the Engineering Department of the Respondent was charged for dereliction of

duty on the allegation that he refused to carry out his duties assigned to him by the Junior Engineer on 22-9-1980 and also instigated other Valve Operators not to do the same work of attending to the valves by replacing the rope. After considering the workman's reply to the charge memo, a domestic enquiry was conducted against him. The domestic enquiry officer has followed a wrong procedure by recording evidence even after the workman's defence was completed. The Enquiry Officer in his report dated 8-6-92 found that first and third charges were proved. A memo dated 23-6-82 from the Chief Engineer directed the worker to show cause against proposed penalty. After rejecting the workers' explanation the disciplinary authority imposed the punishment of cutting one increment with cumulative effect. The workman then filed an appeal on 6-12-82. It was dismissed summarily by the Port Trust Chairman in a single line order. Later, conciliation proceedings taken at the instance of the Union failed. The disciplinary authority has erred in blindly accepting the findings of the Enquiry Officer. The Appellate Authority did not apply his mind before disposing of the appeal. Testimony given by similarly charged sheeted Valve Operators is tainted evidence and it should not have been accepted as proof. When the other charge-sheeted workmen have been let off the Respondent has made hostile discrimination against this particular workman alone. The punishment of withholding increment will lead to monetary loss of Rs. 40,000/- Therefore the punishment is liable to be set aside.

(3) The Chairman of the Respondent in the Counter statement alleges as follows : The workman concerned was appointed as Valve Operators (Class-IV) with effect from 9-4-79. His duties include operating and cleaning a valves and valve pit, fitting ropes to the valve, to prevent leakage of water, attending to small repairs, etc., on 22-9-1980, when the workman Aiykote Raja was directed by his superior to carry out his duties. He refused to carry them out. The charge memo issued to him under the relevant regulation. It imposed three charges to him, namely disobedience by refusal to do work and instigation of other workmen to desist from work. His explanation was not accepted and then a domestic enquiry was conducted. The findings of the domestic enquiry officer were based on proper evidence. The disciplinary authority rightly accepted the findings and issued a show cause notice dated 23-6-82 intimating the proposed punishment. After considering the workman's explanation, the Disciplinary Authority imposed the punishment of withholding one increment cumulative effect by order dated 10-8-1982. Under Regulation 22 of the Employee's Regulations, 1979, the workman should have preferred an appeal within 45 days from the date of receipt of the punishment order by the workman. He preferred an appeal very belatedly on 6-12-1982 when he has received the order on 14-6-1982. Hence the appeal was dismissed as barred by time. The punishment is just and proper, and the findings are supported by acceptable evidence. The appeal has been rightly dismissed. There is no reason to set aside the punishment and the I.D. is liable to be dismissed.

(4) The point for determination is as follows :

"Whether the management of Tuticorin Port Trust is justified in punishing Shri V. Advocate Raja, Valve operator in the Engineering Department by withholding an increment with cumulative effect ? If not to what relief the workman concerned is entitled ?"

(5) For the worker, no oral evidence was given. The Respondent Port Trust examined the assistant Secretary Thiru A. Manthiramoorthy as M.W. 1.

Fxs. M-1 to M-12 were marked. The charge against the worker Thiru Aiykote Raja consists of three head of articles. The acts of misconduct underlying the charges are that the worker disobeyed the orders of the superior to carry out his normal duties and instigated his co-workman to refrain from doing the same work on 22-9-1980. The junior engineer and other valve operators have given testimonies against this workman in the domestic enquiry. The domestic enquiry officer in his report Fx. M-4 has found that charges 1 and 3 have been proved and that charge No. 2 is not proved. Thereafter the disciplinary authority who is the Chief Engineer accepted the findings and issued a second show cause notice

in respect of the proposed punishment. The workman made his representations against the show cause notice and thereafter the Chief Engineer imposed the penalty of cutting one increment with cumulative effect under Ex. M-9 order dated 10-8-1982. The workman filed his appeal very belatedly after a lapse of nearly four months. The notes file containing the office note by the office Superintendent along with the final order of the Port Trust Chairman are found in Ex. M-12. The fact that the Appellant has preferred the appeal belatedly in breach of Regulation 22 prescribing 45 days time for Appeal is clearly proved. When the appeal was presented by the workman, on 6-12-82, he had received the order appealed against as early as on 14-8-82. Hence the one line order namely "appeal dismissed as time barred" passed by the chairman cannot be deemed to have been posted without his application of mind. The ground for dismissal of the appeal is very apparent and hence no detailed reasoning was necessary. However, I feel that the punishment may be modified under section 11-A of the Industrial Disputes Act by removing the cumulative effect on the loss of one year increment. I hold that the domestic enquiry has been conducted fairly, and that the findings are based on proper evidence and that the appeal was dismissed as time barred rightly. Taking a lenient view, the punishment is modified accordingly.

(6) In the result, an award is passed by modifying the punishment into a simple withholding of one increment without.....thereof cumulatively to the subsequent years.
No costs.

Dated, this 26th day of June, 1992.

M. GOPALASWAMY, Industrial Tribunal

WITNESSES EXAMINED

For workmen : None.

For management M. L. Thiru A. Manthiramoorthy.

DOCUMENT MARKED

For workmen : Nil.

Ex. M-1/19-1-80—Letter from Management to the Petitioner-Union enclosing duties & responsibilities of Valve Operator (copy).

Ex. M-2/12 11-80—Charge memo issued to Thiru V. Aiyacote Raja, Valve Operator (copy).

Ex. M-3—Proceedings of the Enquiry Officer (xerox copy).

Ex. M-4/8-6-62—Findings of the Enquiry Officer (xerox copy).

Ex. M-5/23-6-82 show cause Notice issued to Thiru V. Aiyacote Raja (xerox copy).

Ex. M-6/12-7-82 Letter from Thiru V. Aiyacote Raja to the Management (xerox copy).

Ex. M-7/13-7-82—Letter from Management to Thiru V. Aiyacote Raja.

Ex. M-8/24-7-82—Explanation of Thiru V. Aiyacote Raja to the show cause notice (xerox copy.)

Ex. M-10/8-82—Order of Punishment viz. "withholding of increment with cumulative effect for a period of one year" imposing of Thiru V. Aiyacote Raja (Xerox copy).

Ex. M-10/6-12-82—Appeal preferred by Thiru V. Aiyacote Raja to the Chairman, Tuticorin Port Trust. Tuticorin against the order penalty M-9 (copy).

Ex. M-11/27-1-83—Order dismissing the Appeal referred by Thiru V. Aiyacote Raja (copy).

Ex. M-12/24-1-83—Not file extract of the Management (Xerox copy).

नई दिल्ली, 1 दिसम्बर, 1992

का.आ. 3153.—ओर्थोगिक विवाद प्रधिनियम, 1947 (1947 का 14) की मार्त्रा 17 के अनुसरण में, केन्द्रोय सरकार कुदरेमुख आगरन और कम्बनी लिमिटेड बंगलोर के प्रबन्धनन्द के संबंध नियोगकों और उनके कर्वकारों के बीच, अनुबंध में निर्दिष्ट ओर्थोगिक विवाद में केन्द्रीय सरकार ओर्थोगिक अधिकारण, बंगलोर के वंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-11-92 को प्राप्त हुआ था।

[मुद्रा एन-26011/14/85-D.III(B)]

बी.एम. डेविड, ईस्क अधिकारी

New Delhi, the 1st December, 1992

S.O. 3153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kudremukh Iron Ore Company Ltd. Bangalore and their workmen, which was received by the Central Government on the 30-11-92.

[No. L-26011/14/85-D.III(B)]

B. M. DAVID, Desk Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated this 6th day of November, 1992

Present

Shri M. B. Vishwanath, B.Sc., LL.B, Presiding Officer.
Central reference No. 69/88

I party

1. S. Hariprasad, Major
2. K. Chandrashekaran,
3. S. Srinivasa Murthy,
4. Cyril Fernandes,
5. Shyam Karjel,
6. Gregory D' Mello,
7. B. Johnwesly
8. G. Rudramuniyah,
9. H. K. Bajikar,
10. B. M. Matadeppaiah,
11. G. P. Maheshwarappa,
12. T. B. Venkateshan,
13. M. R. Pattan,
14. P. K. Thalagatti,
15. Mallikarjunappa,
16. Anandachari,
17. Murali,
18. Srisharacharya,
19. Ashok V. Naik,
20. Vajayakumar A.H.,
21. Ravichander C.K.
22. M. C. Siddaramappa,
23. B. Devidas,
24. M. Subramani,
25. N. D. Nadigar,
26. A. Nagappa Reddy,
27. C. Rangaswamy,

3070 GI/92-5

II Party

The Managing Director,
Kudremukh Iron Co. Ltd.,
K.I.O.C.L., Koramangalam
Bangalore-560034.

28. S. David,
29. G. S. Venkatachalapathi,
30. Mahantappa S. Katti,
31. Shivalingappa,
32. B. S. Prasanna,
33. Y. Vamana Bhat,
34. M. Girish Babu,
35. Umar Beary,
36. Harry L. D'Souza,
37. K. Vishwanath Pai,
38. Hari Krishna M.
39. J. B. Pais,
40. T. Veeranna,
41. F. Habib Sab,
42. A. C. Ramgouda,
43. J. Peter Norbert,
44. A. E. Lingachar,
45. Shivasharanappa,
46. R. Raju,
47. P. Dhanasegaran,
48. M. Thirunavakkarasu,
49. T. Murugeshan,
50. Arjun Gundad,
51. I. B. Koli,
52. Chandrashekhar N. Naidu,
53. Swamy Rao T. Gudi,
54. K. G. Venkataramana,
55. Sharanappa M.H.
56. M. Krishnamurthy,
57.
58. J. W. D'souza,
59. K. L. Govindappa
60. S. R. Shadakshari,
61. R. Ramachandrappa,
62. A. Srinivasaachary,
63. Sannappa,
64. Achuthachary,
65. G. P. Murugesappa,
66. D. Gurunath,
67. L. B. Elegudiri,
68. M. B. Awati,
69. S. Arokia Swamy,
70. S. R. Shariff,
71. Shivashankarappa, H.
72. R. Doddaveerachari,
73. S. M. Kittur,
74. I. A. Prasannakumar,
75. G. Abdul Razaq,
76. K. S. Mahalingaswamy,
77. S. S. Hubballi,
78. R. Hanumanthegouda,
79. K. P. Thammaona,
80. N. S. Santhesh,
81. T. Vincent,
82. G. Kirubagaran,
83. V. Vijaya Kumar,
84. B. N. Swamy,
85. S. G. Nayak,
86. Thirumala Rao,
87. C. Murundappa,
88. N. K. Srikanta,
89. J. Shivamurthy,
90. S. G. Mohanrai,
91. M. Subramani,
92. S. C. Harthi,
93. K. Parthasarathy,
94. Bhimanna,

95. Kumpaiah,
 96. K. Vijaykumar,
 97. Basavaraj S. Ankulani,
 98. M. Somasundaram,
 100. M. V. Aswathanarayana,
 101. A. H. Munal,
 102. Jayappa,
 103. M. Murulasiddappa,
 104. P. Dadavali,
 105. B. K. Eshwaraiah,
 106. B. R. Ramakotaiah
 107. Siddagangairh,
 108. M. Bhathmanthan,
 109. Shreeshail Kamargond,
 110. B. Rajashekharappa,
 111. J. Willian D'Souza,
 112. D. Damodaran,
 113. P. R. Bhayankar,
 114. A. M. Gopinath,
 115. Shanker Nuik,
 116. K. K. Subramanian,
 117. Gounda, S.T.P.
 118. Chacko Chan.

All are employees working in
 K.I.O.C.L., Kudremukh
 Chickmagalur District.

AWARD

In this reference made by the Hon'ble Central Government under its Order No. L-26011/14/86-D.III(B) Dt. 19-12-88, the point for adjudication as per schedule is :

"Whether the demand raised by Shri S. Hariprasad and 30 others Junior Mechanics-II, Kudremukh Iron Ore Company Ltd., Kudremukh against the management of Kudremukh Iron Ore Company Ltd., Bangalore for grant of pay equal to that of the pay fixed for Diploma Holders is justified ? If so, what relief are the concerned workmen entitled to ?"

2. From the schedule it can be seen that I party members were in all 31 viz, S. Hariprasad and 30 other Junior Mechanics Grade-II. It is seen from the records that the I party has filed I.A.II on 23-5-89 under Order 1 Rule 10 C.P.C. praying that 81 more applicants mentioned in I.A. II should be impleaded as I party workmen as additional parties. It is further seen from the order sheet and the endorsement on I.A. II that the Learned Counsel for the II party, curiously, has stated no objections to I.A. II. However it is seen from the claim statement filed subsequently to impleading additional I party workmen that 118 workmen are shown as the I party workmen/claimants. It is not possible to understand how the number of the I party members who were 112 became 118 in the claim statement filed on 7-6-89. No objection appears to have been raised by the II party regarding this discrepancy. So we have to proceed on the basis that there are 118 I party workmen.

3. Prior to filing I.A. II referred to above, the I party members who were then 31 have filed claim statement on 11-1-89. After I.A. II for impleading additional I party member was allowed, the 118 I party workmen have filed their claim statement on 7-6-89. The claim statement filed on 7-6-89 appears to be virtually a copy of the claim statement filed on 11-1-89 except for the fact that 118 members are shown as members of the I party. After the claim statement dated 7-6-89 was filed, curiously the II party has not filed additional counter statement and has allowed the case to be posted directly for evidence of I party workmen.

4. In the claim statement dated 7-6-89 it is contended :— The I party workmen are holders of either National Apprenticeship certificate (NAC) or National Trade Certificate

(NTC). They joined the services of the II party management as Junior mechanics (Grade-II). There are in existence :—

- (i) Jr. Mechanic (Grade II)—(Lowest grade)
- (ii) Jr. Mechanic (Grade I)—(Next lower grade)
- (iii) Mechanic-II—(Higher grade)
- (iv) Mechanic-I—(Highest grade)

There are diploma holders also in the II party. They have obtained diploma certificate from Government polytechnics. These diploma holders, however, are appointed to the post of Mechanic-I directly. The mode of training and the method of study the diploma holders have undergone is similar to the mode of training and the method of study undergone by the NAC or NTC holders. Yet the diploma holders are recruited directly to the post of Mechanic-I, while the NAC/ NTC holders are recruited directly only to the lowest grade viz., Junior Mechanic (Grade-II). The scale of pay prescribed to the post of Jr. Mechanic-II is Rs. 585-16-697-18-823. The scale of pay prescribed to Mechanic Grade-I is Rs. 690-32-914-34-1152. Since the qualifications of both the I party workmen and the diploma holders are one and the same (Sic), there cannot be any disparity in their designation and pay scales. The I party workmen are placed three grades below the diploma holders. The I party workmen, who are joined as Jr. Mechanic (Grade II), have to wait for atleast 3-1/2 years before they can get their first promotion to the next grade Jr. Mechanic (Grade-I). Another period of about 3-1/2 years is required for promotion to the next higher grade Mechanic-II. A further period of 3-1/2 years is required for promotion to the post of mechanic-I. It takes minimum period of 12 years for a Jr. mechanic (Grade II) to reach the post of mechanic-I, though the qualifications possessed by both the I party workmen and diploma holders is one and the same.

5. Even in terms of workload and the nature of responsibility of the work, the I party workmen have been performing the work which is same or similar to the one performed by the diploma holders :—

- (i) The diploma holders who are appointed by the company as OCM-I is operating, Wabco Haulpak 120 trucks/shovel/60 R Drill. The same equipment is also being operated by NTC/NAC holders i.e., I party workmen individually ;
- (ii) The operation of conveyor from Crusher to Silo operation is doing by diploma holders. The same work is also being done by the NAC/NTC holders individually ;
- (iii) The maintenance of earth-moving equipments/conveyors/maintenance of crusher and apron feeders, is done by the diploma holders. The said job is also being done by the NAC/NAC holders individually ;
- (iv) The Precision jobs like pump calibration, crank shaft grinding, over-haulings of heavy earth moving engines/light vehicles/over-hauling of transmission, is also done by the diploma holders as also the NAC/NTC holders ;
- (v) Submerging welding, operating lute machines, horizontal borings machines is done by the NTC/NAC holders individually like that of diploma holders.
- (vi) Plant controls/ship loading and conveyor belts is operated by diploma holders. The said job is also done by the NAC/NTC holders like that of diploma holders.

The quantum of work turned out by the I party workmen who are NAC/NTC holders is the same as that turned out by the diploma holders. The I party workmen base their claim in this case on the ground of equivalence in qualifications and equivalence in work load.

6. The Government of India has issued memorandum in No. TC/NTC/14(3)/66 dated 7th February, 1966 for treatment of NAC/NTC holders on par with diploma holders. In any view of the matter, award has to be passed in favour of the I party workmen, directing the II party to accord equal treatment to the I party workmen as that of diploma holders, in the matter of designation, scale of pay, promotion etc. On the principles of equal pay for equal work the I party workmen are entitled to succeed.

7. In the counter statement it is contended by the II party:—

It is false that the method of training and method of study of NAC/NTC course is one and the same as diploma course. The diploma holders have to study for 3 years. At the end of each year there is a public examination. NAC/NTC holders get only certificates. The qualification of NAC/NTC holders is not equivalent to diploma. Diploma is a higher qualification than the NAC/NTC. This is confirmed by the Board of Technical Examinations. The I party workmen cannot claim the same pay scales and job positions as that of diploma holders. There are qualitative differences in the performance between the diploma holders and NAC/NTC holders. In view of the difference in the qualifications, the NAC/NTC holders are appointed as Junior Mechanic (Grade-II), while the diploma holders are appointed as Mechanic-I. Subsequent promotion of employees from Jr. Mechanic (Grade II) is governed by the seniority, promotion rules etc. The job assigned and performed by diploma holders is always of higher than that of NAC/NTC holders. This is not an instance to which the principles of equal pay for equal work could be applied. In spite of directions by this Tribunal the I party has not produced the Government of India memorandum Dt. 7-2-66 in which it is alleged that NAC/NTC holders are considered on par with diploma holders. The level of sophistication and quality of the jobs performed by the diploma holders by virtue of their academic standard cannot be equated with that of NAC/NTC holders. These two categories of personnel cannot be given the same scale of pay and designation. The I party workmen are not entitled to any relief. The reference has to be rejected.

8. On behalf of the II party four witnesses have been examined. These witnesses have filed their affidavits. On the basis of their affidavit averments, they have been cross-examined in this Tribunal. On behalf of the I party workmen, seven witnesses have been examined. Out of these seven witnesses, W.W. 4 to W.W. 7 have filed affidavits. Thereupon they have been cross-examined in this Tribunal.

9. I should have stated earlier that my Learned Predecessor has not framed any issues in this case, obviously because the point for adjudication is covered by the schedule to the reference. The schedule to the reference is itself the issue.

10. I have stated in para 4 the four existing gradation of mechanics. The I party members who are National Apprenticeship Certificate/National Trade Certificate holders are appointed to Jr. Mechanic Grade II, this is the lowest grade. The diploma holders are appointed to Mechanic Grade I directly. I have already given the gradation or hierarchy of the four posts. It is obvious that the I party members who are appointed to Jr. Mechanic Grade II are claiming grant of pay equal to that of the pay fixed for diploma holders. To put it in service language, the I party members are claiming not promotion, or double promotion, but treble promotion. This should be clearly, borne in mind.

11. W.W. 1 Hariprasad has stated in his evidence (para 49) that their claim is that they should be paid the salary of the post of Mechanic-I though they are holding the post of Jr. Mechanic Grade II. This has been stated by the other witnesses on behalf of the I party.

12. To answer the question whether the I party members who hold the posts of Jr. Mechanic Grade-II are entitled to the pay drawn by diploma holders who hold the post of Mechanic-I. We have to see first whether the I party members do the same or similar work done by the diploma

holders. We have to then seen whether the qualification NAC|NTC is equal to the diploma certificate from Government polytechnic or whether diploma certificate is a higher qualification than NAC/NTC. When this point is answered the Tribunal has to see whether the I party members are entitled to the pay fixed for diploma holders.

13. M.W. 1 Umesh Atandrao Pikale, Engineer, (Addl. Superintendent, Mines), Kudremukh has stated in para 16 of his evidence that OCM-I, OCM-II, Jr. OCM-I have handled 120-C Wabco trucks. From this it is clear that the persons of Mechanic-I and persons of lower grade have done the same kind of work, viz., operating 120-C Wabco trucks. Ex. W. 10, W. 11 and W. 12 are the monthly statements showing the persons who have operated wabco trucks. These statements have been signed by M.W. 1. Ex. W. 10, 11 and 12 show that both NAC|NTC holders and diploma holders have operated Wabco trucks i.e., even persons holding Jr. Mechanic Grade-II have operated Wabco trucks alongwith diploma holders holding the post of Mechanic-I for equal numbers of hours or even more. Ex. M. 18 to 25, M. 47 to M. 63 and M. 73 to 85 which are production truck shift reports also show that Jr. Mechanic grade-II employees (NAC/NTC holders) have operated the 120-T Wabco trucks like employees holding the post of Mechanic-I (diploma holders) shown in Exs. M.26 to 46 and M.64 to 72. The documents so far referred show that the employees holding the posts of lower in rank to mechanic-I employees have also done the same work.

14. Ex. M.139 to 154 are job tickets issued by the shift incharge. These documents also show that all the four categories of workers have done the similar work in regard to repairs on the mechanical and electrical sides. Ex. M.141 shows the dynamo break failure in Wabco truck No. 19. This Ex. M.141 shows that this work was attended to by diploma holder Mohan and Kandale a certificate holder and Kuttappa another certificate holder. Ex. M.142 also shows the dynamo break failure wabco truck No. 1 and it was attended to by P. Sarathy and Kumar who are certificate holders. Exs. M.194 to 209 are the overtime statements. These documents show that the NAC/NTC holders have done overtime work in operating wabco trucks. Thus all the employees holding the four different posts have performed the same or similar work in regard to wabco trucks. There is no force in the argument that the work relating to wabco trucks is done exclusively by employees holding the post of Mechanic-I (diploma holders).

15. Shovel is an instrument used at the mining spot to lift the ore from the earth and put it in the wabco trucks for transportation to the plant. According to M.W.1, this sophisticated instrument is operated only by diploma holders (mechanic-I). Ex. M.6 to 11 and M.17 relate to the maintenance of shovels. These documents show that an employee Rao (NAC/NTC holder) has operated shovels when he was a Jr. Mechanic Grade-II. Exs. M.12 and 14 to 16 are shovel shift reports. W.W. 4 Bower who has filed affidavit Ex. W.3 is a NAC/NTC holder. Ex. M.14 to 16 show that Bower has operated shovels when he was Jr. Mechanic Grade-II. Ex. M.13 also shows that he was operating shovel. Exs. M.86 to M. 124 are shovel shift reports in respect of the diploma holders. The documents mentioned herein clearly show that persons holding lower post have operated the sophisticated instrument shovel like diploma holders. So it is difficult to believe that shovels are operated exclusively by diploma holders holding the post of Mechanic-I and not by employees holding lower posts like Jr. Mechanic Grade-II.

16. Exs. M.155 to 158 are shovel reports in respect of the operation of 60 R Drills related to one Sarjinda Exs. M.159 and 163 relate to one Sharma. Ex. M.164 is in respect of one Sawal Exs. M.175 to 183 are in respect of A. B. Rao. These documents show that persons below the rank of Mechanic-I (highest post) have handled 60 R Drills. These documents show that some of them were employees belonging to Jr. Mechanic Grade-II (lowest post).

17. Exs. W.13 to W.18 are job authorisation slips issued by the mining department. These documents show that same kind of work is assigned to the Mechanic-I (OCM-I) and the

persons holding the lower posts. Thus there is no substance in the contention that NAC/NTC holders, unlike diploma holders do not operate sophisticated instruments.

18. Exs. M.399. to M.401 relate to diploma holders regarding the electrical maintenance. Ex. M.408 relates to Noor Ahmed, Electrician Grade-II. Ex. M.410 relates to K. Parthasarathy Jr. Electrician Grade-I. Ex. M.412 relates to Vijay Kumar, Jr. Electrician-I and Ex. M.413 relates to S. Chandrappa, Jr. Electrician-II. These documents read conjointly with Exs. M.399 to 401 show that persons holding lower posts do similar work or same work like diploma holders.

19. Ex. M.348 to M.353 are job authorisation slips in respect of mechanical maintenance. These relate to diploma holders holding the higher post of mechanic-I. Exs. M.356 to 382 relate to NAC/NTC holders holding lower posts. Comparison of these documents shows that the persons holding the lower posts do the same work as persons holding the highest post (mechanic-I).

20. Ex. M.227 shows that two diploma holders Omkarappa and Ramesh who are technicians grade-I (higher than Mechanic-I) have attended to the work of Wabco engine overhaul. Ex. M.228 shows that one Demello (A trainee), NAC/NTC holders and who was a Mechanic-II has done the same job. Ex. M.219 shows that this Demello has attended to the work of Grove Crane Engine overhauling. Ex. M.220 shows that diploma holder Omkarappa also has attended the same work. Ex. M.213 relates to S. Hariprasad (I member of the I party) who is a Jr. Mechanic Grade—I. He has attended to fuel injection pump calibration. Ex. M.214 relate to Omkarappa, diploma holder, Technician-I. He has done the same work like Hariprasad. So also fuel pump calibration has been done by Jr. Mechanic-I as also diploma holder. Crunk Shaft regrounding of Tata Engine has been done by diploma holder Anjaneya as per Ex. M.318. The same work has been done by Eashwarappa Jr. Mechanic Grade-II (lowest post). Ex. M. 320 relates to Eashwarappa, Jr. Mechanic Grade-II.

Ex. M. 232 relates to Lakshmana Shetty, diploma holder Technician-I and another. Both have attended to the work of Wabco toppen adjustment. Ex. M. 233 shows that diploma holder Mohankumar and Billappa, Jr. Mechanic-II have attended to the work of overhauling the steering gear boxes. Ex. M. 234 shows that Rangaswamy Jr. Mechanic Grade-II and Billappa Jr. Mechanic-I have done the same work like diploma holder Mohankumar.

21. Ex. M. 263 shows the allotment of the work of overhauling hoist cylinder of two Wabco trucks. One is allotted to Billappa Jr. Mechanic-I and Sham Kherjul Mechanic-II (both holding lowest post). The other Wabco truck has been allotted to Mohankumar (Diploma holder) and C. V. K. Reddy (diploma holder). Ex. M. 554 shows the mutual shift change. This shows that diploma holder Chandregouda opted with mutual shift change with S. Hariprasad, Jr. Mechanic Grade-II.

22. The overtime statement Ex. M. 551 shows that assembling of slurry pump is attended by both diploma holders and NAC/NTC holders. Ex. M. 538 also shows this. Ex. M. 464 shows that diploma holder Chitargi and NTC/NAC holder Elegudri have attended to the work of changing the belt of C.B. Same work has been done by Azam Jr. Mechanic-II (Lowest grade). The work of gear box motor alignment, shut down jobs has been attended to both by diploma holders and the employees holding lower posts. This is clear from Exs. M. 544 and Ex. M. 510.

23. Ex. M. 520 P.S. 66 gear box alignment which is a sophisticated work has been attended by a diploma holder and Jr. Mechanic-I. So also Exs. M. 545 and 524. Ex. M. 448 (book 48) shows that fluid coupling alignment has been done by both diploma holder and NAC/NTC holder. Ex. M. 454 is office order and Ex. M. 553 is mutual shift change showing that Annappa Poojary, Jr. Mechanic-I has been asked to relieve a diploma holder.

24. From the discussion above, I am of opinion, there is overwhelming evidence to show that the I party members

(NAC/NTC holders) employees holding lower posts do the similar or same work as the employees holding the highest post Mechanic-I (diploma holders).

25. Now the Tribunal has to see whether the qualification NAC/NTC is equal to the diploma certificate from Government Polytechnics or diploma certificate is a higher qualification than NAC/NTC.

26. I have already stated that the I party members who are in the lowest grade are claiming, mind you, highest post, treble promotion on the ground that they do the same work.

27. In the claim statement the I party members have stated that the Govt. of India issued memorandum in No. TC/NCT/14(3)/66 Dt. 7-2-1966 for treatment of NAC/NTC holders on par with diploma holders. If this memorandum had been produced by the I party members, it could have clinched the matter and the I party members could have carried the day. But this memorandum has not been produced despite directions by the Tribunal.

28. The Hon'ble Govt. of India refused by its communication Dt. 6-5-87 to refer the present dispute for adjudication by this Tribunal on the ground that NAC/NIC is not equivalent to diploma awarded by polytechnic and that the demand of the I party members was contrary to the recruitment policy of the management, job specification and promotion policy. Thereupon the I party members filed the writ petition 9736/87 before our Hon'ble High Court. In this W.P., by the order dt. 20-9-88 his Lordship Hon'ble Mr. Justice M. Rama Jois was pleased to allow the writ petition and direct the Central Government to reconsider the question of referring the dispute for adjudication by the Tribunal. It was only then the Ministry has referred the present dispute to this Tribunal. In the order passed in the W.P. his Lordship has been pleased to observe at the end of para 3 :—

“Such a question cannot also be decided by the Labour Court for the reason, a declaration of equivalence of qualifications has to be done by the competent authority of the State Government or the University as the case may be.”

On the strength of this observation by our Hon'ble High Court it is contended by the Learned counsel for the I party member that this Tribunal cannot go into the question whether the NAC/NTC is or is not equivalent to diploma and that this Tribunal has to see only whether the work done by I party members (NAC/NTC holders) is the same or similar to the work done by the diploma holders. This argument cannot be accepted. Earlier to the portion extracted from his Lordship's observations, extracted above his Lordship's has been pleased to make it abundantly clear that :

“From the above letter of the Board of Technical Education, it is clear that the National Trade Certificate and National Apprentice Certificate qualification are not equivalent to diploma.”

So this Tribunal has to necessarily see whether NAC/NTC is equal to the diploma or whether the diploma is a higher qualification than NAC/NTC.

29. Ex. M-1 is the communication dated 13-11-86 made by the Secretary, Board of Technical Examinations, Bangalore to the Personnel Officer of the II party. In Ex. M-1 it is clearly stated that NAC/NTC is not equivalent to diploma issued by the Board of Technical Examinations, Department of Technical Education, Bangalore. It is clear from the words NAC/NTC that they are only certificate courses conducted by the Government as job oriented course, for providing employment opportunities. The diploma holders have to study for three years and face public examination. Ex. M-2 is the affidavit of M.W. I. Pikale, Engineer. He has been cross-examined by the Learned counsel for the I party in respect of his affidavit averments. He has sworn in his affidavit Ex. M-2 at para 8 that the qualification NAC/NTC is not equivalent to diploma. He has sworn that NAC/NTC course is mainly certificate course conducted by the Government as job oriented courses, whereas diploma holders are required to study for three full years and at the end of each year there will be a public examination. He has sworn that the subjects prescribed for the diploma course and syllabus

and total marks allotted for each year are of much higher order compared to NAC/NTC courses. He has sworn that diploma holders have to undergo a thorough and exhaustive study of the subjects. He has sworn that the qualification of NAC/NTC is not equivalent to diploma. There is nothing to disbelieve this version in Ex. M-2. Ex. M-2 para 6 read conjointly with Ex. M-1 leads me to the conclusion that diploma is a higher qualification than NAC/NTC.

30. Now this Tribunal has to see, in view of the findings above whether the I party members are entitled to the pay fixed for the diploma holders though their qualification is lower than the qualification of diploma holders and though they do the same work as diploma holders.

31. It is argued by the learned counsel for the I party members that in view of the law laid down by the Supreme Court 'Equal work, Equal pay' the I party members are entitled to the same pay as that of diploma holders. He relied on AIR 1988 S.C. 1504 (Jaipal and others v/s. State of Haryana and others). The Supreme Court has been pleased to lay down that :

'duties performed by Instructors working in Adult and non-formal Education Scheme in Haryana are similar to those performed by Squad Teachers in Social Education Scheme of that State and so the Instructors entitled to same pay scale as sanctioned to Squad Teachers."

I have carefully and respectfully read this decision of the Supreme Court. The Hon'ble Supreme Court has been pleased to hold :

'The doctrine of equal work equal pay would apply on the premise of similar work but it does not mean that there should be complete identity in all respects.'

In the decision of the Supreme Court both the squad teachers and instructors possess the minimum qualification of matric, though some squad teachers possess 10+2 certificates and many of them were graduates. Both the class of persons had the minimum qualification of matric. It is clear from the decision of the Supreme Court that one class of persons did not lay claim to a higher post. In the instant case diploma holders are appointed to higher posts in view of their qualification. The I party members who have a lower qualification, on the ground or same work, have claimed same pay granted to diploma holders. In my humble opinion AIR 1988 S.C. 1504 is not an authority for the proposition that persons in lower posts with lower qualification, because they do the same work should be granted the same pay as the persons in higher posts with higher qualification.

32. In AIR 1986 S.C. 584 (Surinder Singh and another v/s. The Engineer in Chief, CPWD, and others) the persons who were working on daily wage basis in C.P.W.D. claimed the same wages as permanent employees employed to do identical work. It is clear from the decision of the Hon'ble Supreme Court the point whether persons appointed to lower posts with lower qualification could be granted the same pay as the employees appointed to higher posts with higher qualification was not involved.

33. In AIR 1988 S.C. 319 (Delhi Municipal Karmachari Ekta Union v/s. P. L. Singh and others) employees on daily wages were doing the same work as permanent employees. The Supreme Court was pleased to issue suitable directions to grant equal pay to the employees on daily wages. So also in AIR 1988 S.C. 517 (U.P. Income Tax Department contingent Paid Staff Welfare Association v/s. Union of India and others).

34. In AIR 1987 S.C. 2049 (Bhagwan Dass and others v/s. State of Haryana and others) Equal pay for Equal work was granted since duties and functions discharged and work done by the Supervisors appointed on regular basis and those appointed on temporary basis in the Education Department were similar.

35. In AIR 1987 S.C. 2342 (Daily Rated Casual Labour employed under P & T Department through Bharatiya Dak

Tar Mozdors March v/s. Union of India and others) the Supreme Court, as is clear from para 7 at page 2346, was pleased to order that casual labourers belonging to the several categories of employees should be paid the same wages equivalent to the minimum pay in the pay scales of the regularly paid workers in the corresponding cadres. It should be borne in mind that the cadres involved were same. One cadre corresponded with the other cadre.

36. In AIR 1990 S.C. 495 (U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd., U. P. v/s. Its workmen) the doctrine of Equal pay for Equal work was laid down by the Supreme Court when both Senior and Junior groups of promotees did the same type of work, though one group of promotees were promoted earlier.

37. In AIR 1987 S.C. 411 (State of Mysore v/s. B. Basavalingappa) it is clear from the authority of the Supreme Court there was one scale of both certificate holders and diploma holders. They held the same posts. In the present reference the I party members hold different post, unlike the diploma holders.

38. In AIR 1988 S.C. 1781 (Jeet Singh and others v/s. M.C.D. and others) the petitioners who were in continuous employment for many years were regularised. The Supreme Court was pleased to hold that these employees were entitled to salary and allowances on the same basis as paid to regular and permanent employees.

39. To repeat myself, in none of these authorities relied on by the Learned counsel for the I party was involved the question of Law whether the employees with lower qualification appointed to the lower post were entitled to the pay of the employees with higher qualification appointed to the higher posts. In my very humble opinion none of these authorities is applicable to the facts of the present reference.

40. The Learned counsel for the I party has produced a certified zerox copy of the order passed by our hon'ble High Court Dt. 16-7-65 in W.P. No. 878/63. In this case the Government had refused to implement its own order. The Law laid down in this W.P. is not applicable.

41. It has been laid down by the Supreme Court in 1989 (1) L.I.N 566 (Mew Ram Kanodia v/s. All India Institute of Medical Sciences and others) that it is open to the State to classify employees on the basis of qualifications and prescribe different scales of pay for different posts.

42. In 1991 L.I.N 949 (State of West Bengal and others v/s. Arabinda Bhattacharya and another) the Calcutta High Court has been pleased to hold that on the basis of the Educational qualification and professional expertise, persons holding similar posts may be treated differently in matter of their scales of pay.

43. These two authorities are applicable to the facts of the present reference. I am of opinion that the claim of the I party members is not justified in view of difference in qualifications between them and the diploma holders, though they do the same or similar work as the diploma holders do.

44. For the aforesaid reasons I am of opinion, the reference has to be rejected.

45. Regarding costs I have read exhaustively lest I should commit any mistake. Even so, if I have committed any bona-fide mistake, I humbly pray that I may kindly be excused. Rules under the I.D. Act do not say anything regarding costs or the quantum of costs, though Sec. 11(7) of the I.D. Act makes reference to costs. In regular Civil side costs follow the event. But in Industrial adjudication, as is stated in the Law of Industrial Disputes by O. P. Malhotra, Fourth Edition, Vol. 2 at page 760, ordinarily, costs do not follow event and it is unwise to give costs in the labour dispute, unless the conduct of either party has called for. But where the conduct of the party is reprehensible, such as harassing the party, Tribunals would be justified in awarding costs. The II party is a big public undertaking where thousands of persons are employed. The II party has not produced any recruitment policy or recruitment rules, particularly recruit-

ment rules. If the II party had produced recruitment rules, I do not think the I party members would have agitated the present matter. There would not have been this controversy. Because II party has not framed recruitment rules the I party members have been put to anxiety. For these reasons, though the reference has to be rejected I am inclined to allow costs in favour of the I party members to be paid by II party and direct the II party to bear its own costs.

46. The 1st member of the I party Sri S. Hari Prasad has been attending the Tribunal regularly. He appears to be incharge of the case on behalf of the members of the I party. He should be allowed more costs.

47. All other documents and evidence not referred to by me are not relevant. In any case they do not alter my conclusions.

ORDER

The reference is rejected. Award shall be passed rejecting the reference.

In the circumstances of the case the II party shall pay costs to the members of the I party. II party shall pay Rs. 2,000/- as costs to 1st member of the I party Sri S. Hari Prasad. Each of the other members shall be paid Rs. 500/- towards costs payable by the II party.

II party shall pay I party's Advocate's fee of Rs. 2,000/-.
(Dictated to Stenographer, typed by him, corrected, signed by me on this 6th day of November 1992).

M. B. VISHWANATH, Presiding Officer

नं० दिल्ली, १ दिसंबर, १९९२

का.गट. १५४--ओर्डरिंग क्रियान् अधिनियम, १९४७ (१०/७ का १४) के अनुसार मे, केन्द्र य सराय तेजपालगं पालकुलिक रैम श्रावण, महसाना के प्रबन्धतन्त्र के संबद्ध नियोजकों और अन्य कर्मकारों के बाल, प्रबन्ध म तिरिचं ओर्डरिंग क्रियान् में अधिनियम अधिनियम, अहमदाबाद के पंचपट का प्रतापित करता है, जो केन्द्र य सराय की १-१२-१९९२ की प्राप्त हुआ था।

[मस्ता प्र०-३००११/१८४-डि-III(य.)]

मि. एम. डिविड, डिस्क ऑफिसर

New Delhi, the 1st December, 1992

S.O. 3154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oil and Natural Gas Commission, Mehsana and their workmen, which was received by the Central Government on the 1-12-1992.

[No. L-30011/2/84-DIU(B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE SHRI H. R. KAMODIA, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, AHMEDABAD

Reference (ITC) No. 2 of 1988

ADJUDICATION

BETWEEN

Oil and Natural Gas Commission

Mehsana. . .First Party.

AND

The Workmen employed under it. . .Second Party.

In the matter whether the action of the management of ONGC, Mehsana in terminating the employment of

Shri Afsar Khan, Casual Workman, without complying with the provisions of I.D. Act is justified? If not, to what relief the workman is entitled?"

APPEARANCES:

Shri K. V. Gadhra—for the first party.

Shri K. R. Trivedi—for the second party.

AWARD

An industrial dispute between the above named parties was referred for adjudication u/s. 10(1)(d) and 2(A) of the I.D. Act, 1947 to the Industrial Tribunal, Ahmedabad under Government of India, Ministry of Labour, New Delhi, Order No. L-30011/2/84-DIU(B) dated 18-2-88. It has come to this Tribunal for proper adjudication.

2. The industrial dispute relates to the question whether the action of the management of ONGC, Mehsana, in terminating the employment of Shri Afsar Khan, Casual Workman, without complying with the provisions of I.D. Act is justified? If not, to what relief the workman is entitled.

3. The second party has, in its statement of claim, at Ex. 4 contended that the concerned workman was engaged by the Project Manager, ONGC, Mehsana on 29-3-82 with several intermittent breaks upto 27-2-83. His employment after 27-2-83 was not extended and thus his employment came to an end which in law amounted to termination of his employment. This was not legal in as much as the first party had not followed the mandatory requirements contained in Section 25F of the I.D. Act, 1947. He was thereafter employed again and the said employment was not extended beyond 22-7-83 and thus his services were in this way terminated on 23-7-83 without following the requirements contended in Section 25F of the I.D. Act. Thus, the above terminations were illegal. The first party had also not followed the procedure contained in Section 25N of the I.D. Act. Therefore, the second party has prayed to direct the first party to reinstate the concerned workman in service with full back wages from 29-3-82 and continuity in service as if his services were never terminated. It has further prayed to direct the first party to grant pay to the concerned workman in the time scale prescribed for the post in question with all the benefits attached to it in the time scale.

4. The first party has resisted the statement of claim of the second party by filing its written statement at Ex. 6. It has, inter alia, contended that the Tribunal has no jurisdiction to entertain such a reference as it is in competent and bad in law. The concerned workman is not a workman as defined u/s. 2(S) of the I.D. Act. The concerned workman was engaged from 25-6-82 to March, 1983 as contingent workman. The second party has contended that the concerned workman had worked in Geophysical Party No. 18 of Western Region from 1-4-83 to 22-7-83 which is in Baroda. It is a different employer and the appointing authority is also different. Thus, there is no connection between Mehsana Project and Party No. 18, Baroda. He was employed for a particular work for a specified period. He had not completed more than 240 days in 12 consecutive months and so there does not arise any question of violation of Section 25-F of the I.D. Act by it. Therefore, on these grounds, it has prayed to dismiss the reference with costs.

5. The first party had submitted an application Ex. No. 41 praying to hear the point mentioned therein as preliminary point as it practically goes to the root of the case. This prayer was resisted by the second party by filing its written reply at Ex. 44. Thereafter the parties were heard. By an order passed below Ex. 41 this Tribunal was pleased to direct to hear the following issue as a preliminary issue.

Preliminary Issue

Whether the industrial dispute regarding the justification of otherwise of termination of employment of the concerned workman firstly on 25-3-83 and subsequently on 23-7-83 as violative of the provisions contained in the I.D. Act can be said to continue to subsist in view of his admitted employment at intervals as per the facts detailed in his application at Ex. 26.

6. On the date of the hearing of the above preliminary issue, neither the second party nor the concerned workman was present and so it was not possible to hear them. Therefore, the first party was only heard. I have gone through the entire record of the case.

1. The above preliminary issue came to be raised in view of application at Ex. 27 submitted by the second party for permission to amend the statement of claim. It wanted to add some facts pertaining to the employment at intervals of the concerned workman after his alleged termination as contended in the statement of claim. That prayer was rejected as per the order dated 28-1-92 passed below Ex. 27. It appears from the endorsement below at Ex. 1 and more particularly endorsement at serial No. 6 pertaining to forwarding of the copy of this reference that the Assistant Labour Commissioner had submitted a failure report as conciliation Officer on 19-10-84. Therefore, the matter was taken in conciliation before the month of July, 1984. No industrial dispute was raised by the second party after the year 1984 i.e., the present dispute seems to have been raised in the year 1984 or prior to that. This fact will clearly go to show that the industrial dispute was raised in respect of something which took place prior to the year 1984 and not in regard to some events or subsequent developments which had taken place thereafter. This position is also very much evident from the averments made in para-5 of the statement of claim. It is contended in the statement of claim that the services of the concerned workman were terminated firstly on 25-3-83 and thereafter on 23-7-83. Now his last employment was from 1-4-83 to 22-7-83 as per the details below paragraph-1 of the statement of claim. His said employment was in Geophysical Party No. 18, Western Region. So he was employed by Baroda Office and not by Project Officer, Mehsana. It appears that the second party was conscious of this fact and that is why it has avoided to request this Tribunal to declare that the abrupt termination of his services on 23-7-83 is illegal and against the principles of I.D. Act. The prayer clauses are to be found in paragraph-6 of the statement of claim. The second party has prayed for the reinstatement of the concerned workman on the ground of his illegal termination from 29-3-82. Thus, the second party has not prayed for any relief in regard to his alleged termination w.e.f. 27-3-83. Anyway, after his first termination from service on 25-3-83 he was again offered employment and as admitted by it, he thereafter served for the period from 1-4-83 to 22-7-83. Thus his first termination had not continued. Thereafter he was also offered employment and he had accepted employment and actually worked as an employee for the above period. There is nothing on the record to show whether or not he had at that time reserved his right to agitate the question of back wages for the period from 25-3-83 to 31-3-83. Thus, it is clear that after a period of one week, he was offered employment. It is also pertinent to note that previously also he was offered employment with intermittent breaks and on all those times he had not treated those breaks as amounting to his termination from service. Anyway, when after his alleged termination from service on 25-3-83 he had accepted employment from 1-4-83 there will not continue to subsist the dispute pertaining to his alleged termination from service w.e.f. 25-3-83. It appears that he had waived that dispute. He had waived his contention and right regarding back wages for the period of one week only and, therefore, he was estopped from raising the dispute regarding his termination from service from 25-3-83. On the contrary, it can be said that in view of the dispute raised by him, employment was offered to him and he had accordingly served from 1-4-83 to 23-7-83. In this view of the matter, there does not arise any question to agitate the contention regarding his termination from service w.e.f. 25-3-83 as violative as per the provisions contained in I.D. Act. As a matter of fact, after the said termination he was reinstated w.e.f. 1-4-83 and so the industrial dispute, if any, which was in existence prior to 1-4-83, ceased to exist. The second party appears to be very conscious of this fact and that is why it has avoided to pray for relief regarding his second termination from service from 23-7-83.

8. Ex. 27 shows that on 1-9-83 he was employed in Technical Section, ONGC, Mehsana. He had thereafter worked till 28-3-87 with intermittent breaks. Thus, about 45 days after 22-7-83, employment was given to him and he had

accepted that employment and accordingly he had worked as such. Thus, one may be inclined to think that the first party had reinstated him in service w.e.f. 1-9-83 and continued to employ him till 28-3-87 with intermittent breaks. There is nothing in Ex. 27 to show that while accepting the employment during the periods mentioned therein the concerned workman had reserved his right to agitate the question of back wages besides the illegality of his termination from service firstly on 25-3-83 and subsequently on 23-7-83. There are, therefore, reasons to believe that by accepting the employment for the periods mentioned in Ex. 27 subsequent to 23-7-83 the concerned workman had waived his right or dispute pertaining to his illegal termination from service. He had also waived his right about his back wages. Any way, these facts will operate as a bar of estoppel to his raising the question of his illegal termination coupled with his prayer for reinstatement in service w.e.f. 25-3-83 and thereafter from 23-7-83 cannot be granted in view of the admitted position that during both these periods he was reinstated in the sense that employment was offered to him and he had accepted those employments with intermittent breaks. Therefore, there is considerable substances in the submission made by the first party that the industrial dispute pertaining to illegal termination firstly on 25-3-83 and subsequently on 23-7-83 cannot be said to remain or subsist in view of his admitted employment at intervals with intermittent breaks as per the facts detailed in Ex. 27. There does not arise any question of reinstatement because the case of the second party is that his termination was in violation of the provisions of the I.D. Act and hence if this Tribunal comes to the conclusion that termination of employment was in contravention or the provisions of the I.D. Act, it will not be required to give direction for his reinstatement but will have to make a declaration that said termination was void as violative of the provisions of the I.D. Act the concerned workman is deemed to continue in service. If such a declaration is made the concerned workman will continue to get all the consequential benefits and therefore, having regard to the nature of the reference made to this Tribunal, there will not arise any question of directing the reinstatement of the concerned workman. This Tribunal has to decide justification or otherwise of the alleged termination of the concerned workman from service by the first party and if this Tribunal comes to the conclusion that the termination is violative of Section 25-F of the I.D. Act, it has merely to declare that the concerned workman is deemed to continued in service. As discussed by me concerned workman was already reinstated in service. He has continued in service, of course, after some breaks after the date of his alleged termination from service. Thus, when he was found to have been reinstated in service or when employment was offered to him and when he had accepted that employment, there will not arise any question of this Tribunal to decide justification or otherwise of his termination from service prior to that. All those questions can be said to have merged with the subsequent developments or events, namely, his subsequent employment at intervals with intermittent breaks by the first party as per the facts detailed by the second party in its application Ex. 27. So, it appears that he was reinstated and thereafter his services were terminated from 29-3-87. The second party will be at liberty to raise an industrial dispute regarding justification or otherwise of the termination of the employment of the concerned workman from 29-3-87 because prior to that he was already engaged by the first party and so it is not necessary to decide the reference because the prayer of the second party can be said to have been satisfied by the first party by offering employment to him at intervals and more particularly because the concerned workman had accepted those employments without reserving his right relating to his earlier termination from service. Consequently, it must be held that the industrial dispute regarding the justification or otherwise of termination of employment of the concerned workman firstly on 25-3-83 and subsequently on 23-7-83 as violative of the provisions contained in I.D. Act, 1947 cannot be said to continue to subsist in view of his subsequent admitted employment at intervals as per facts detailed in his application Ex. 27. Therefore, the present reference will have to be dismissed. So, I pass the following order:

ORDER

For the reasons aforesaid, the present reference stands dismissed with no order as to costs.

Sd/- N. N. Patel,
Secretary.

Ahmedabad, 12th November, 1992.

H. R. KAMADIA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 1992

का.आ. 3155—ओर्डोरिंग विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईस्टर्न रेलवे धनबाद के प्रबन्धतत्व के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्विष्ट ओर्डोरिंग विवाद में द्वितीय सरकार ओर्डोरिंग प्रधिकरण नं. 1 धनबाद के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार की 1-12-29 को प्राप्त हुआ था।

[म. पं. 41012/39/91-दी-२(बी) (पीटी)]

व्री.एम. ईविंग, द्वितीय सरकारी

New Delhi, the 3rd December, 1992

S.O. 3155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1 Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Eastern Railway, Dhanbad and their workmen, which was received by the Central Government on 1-12-92.

[No. L-41012/39/91-D.II(B)(Pt.)]

B. M. DAVID, Desk Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the

Industrial Disputes Act, 1947

Reference No. 5 of 1992

PARTIES :

Employers in relation to the management of Eastern Railway, Dhanbad.

VERSUS

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—None.

For the Workmen—None.

STATE : Bihar.

INDUSTRY : Railway.

Dated, the 16th November, 1992

AWARD

By Order No. L-41012/39/91-D-2(B), dated, the 8th January, 1992, the Central Government in the Ministry of Labour, has in exercise of the powers conferred by Clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management in suspending Shri Bindeshwari Singh, Senior P.C., Eastern Railway Kodarma vide their letter No. C/914/80/90, dated 21-11-90 and subsequently transferring him

by their order No. ET/11/CL/Arrgt/89, dated 22-11-90 to Anpara, A.T.P.S. is legal and justified? If not, what relief the workman is entitled to?”

2. The order of reference was received in the office of the Tribunal on 14-1-92. After receipt of the order of reference several notices were issued to the concerned workman/union for filing written statement by the workman. But neither the concerned workman nor the union appeared before this Tribunal to take any step in the case and in the circumstances, I am constrained to pass ‘no dispute’ award in the present case.

3. Accordingly, I pass ‘no dispute’ award in this case. In the circumstances of the case, I award no cost.

This is my award.

S. K. MITRA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 1992

का.आ. 3156—ओर्डोरिंग विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेस्टर्न रेलवे धनबाद के प्रबन्धतत्व के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्विष्ट ओर्डोरिंग विवाद में ओर्डोरिंग प्रधिकरण मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 1-12-92 को प्राप्त हुया था।

[म. पं. 42012/91/88/दी-२(बी) (पीटी)]

व्री.एम. ईविंग, द्वितीय सरकारी

New Delhi, the 3rd December, 1992

S.O. 3156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Cattle Breeding Farm and their workmen, which was received by the Central Government on 1-12-92.

[No. L-42012/91/88-D.II(B)(Pt.)]

B. M. DAVID, Desk Officer

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU, MADRAS

Wednesday, the 29th day of July, 1992

PRESENT :

Thiru M. Gopalaswamy, B.Sc., B.L., Industrial Tribunal Industrial Dispute No. 9 of 1990

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Central Cattle Breeding Farm, Avadi, Madras-52)

BETWEEN

Thiru L. Raman, 5/64, Central Cattle Breeding Farm Gate, Alampadhi, Madras-600052.

AND

The Director, Central Cattle Breeding Farm, Avadi (Alampadhi), Madras-600052.

REFERENCE :

Order No. L. 42012/91/88-D.II(B), dated 24-1-90 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Monday, the 20th day of July, 1992 upon perusing the reference, claim and counter statements and all other material papers on re-

cord and upon hearing the arguments of Thiru C. Pennuraj, Advocate appearing for the workman and of Thiru S. Seshadri, Central Government Pleader appearing for the Management, and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

This dispute between the workman and the management of Central Cattle Breeding Farm, Avadi arises out of reference under section 10(1)(a) of this Industrial Disputes Act, 1947 by the Government of India in its order No. L-42012/91/88-D.IIB, dated 24-1-90 of the Ministry of Labour, for adjudication of the following issue :

"Whether the management of Central Cattle Breeding Farm, Madras is justified in terminating the services of Shri L. Raman with effect from 28-11-1978? If not to what relief the workman concerned is entitled to?"

(2) The Petitioner-workman states as follows :

He was working as a Calf Attender on daily wage basis with effect from 4-10-1974. He has been discharging his duties regularly and faithfully. The Director of the Respondent, due to extraneous reasons refused to employ the Petitioner from 28-10-78 onwards when the Petitioner went to the work spot. Denial of employment was without any reason and against law. The Petitioner was a major on 28-10-1978. He addressed a letter dated 30-12-1978 to the Director of the Respondent requesting employment to be given. There was no reply from the Respondent. After many years of unemployment and suffering he sent a lawyers' notice on 1-11-85. Then he approached the Commissioner of Labour (Central) for resolving the dispute. But conciliation efforts failed.

(3) The denial of employment amounts to illegal termination from service. The plea of the Respondent made before the Conciliation forum that the Petitioner abandoned the service by voluntarily absenting from duty continuously is wrong. He has worked under the Respondent in the first stage as a casual labourer and in the second stage on adhoc-basis appointment. The petitioner is entitled to be reinstated in service and get back wages along with all other benefits.

(4) The Respondent in its counter statement states as follows :

The Respondent is administratively controlled by the Ministry of Agriculture and Co-operation, Government of India, New Delhi. The Respondent is conducting research work in breeding milk animals. Petitioner's father who was working as a casual labourer during 1973-74 died on 21-9-1974. Due to compassion and at the request of the Petitioner's mother, the Petitioner was employed as a Casual labourer on a daily wage basis in the job of looking after calves, even when the Petitioner was just 15 years old. He has worked under the Respondent upto 18-11-1978. On and from 18-11-1978, the Petitioner stopped coming to work. When the work available was being done by as many as 200 workers, the Respondent had no reason to deny work to the Petitioner. The alleged letter dated 30-12-1978 was not received by the office of the Respondent. It is not true that due to extraneous reasons, employment was denied to the Petitioner. The Petitioner has kept quite without coming to the Respondent's office and without seeking re-employment for a long time. It is clear that the Respondent left the work on his own accord. Petitioner's service was not terminated illegally. His claim made after a delay of 10 years is liable to be dismissed. The Respondent's establishment is now having more employees than it is necessary. There is no merit in the claim petition.

(5) The point for consideration is :

(1) Whether the Petitioner's service was terminated or his employment was denied illegally from 28-11-1978

(2) To what relief?

(6) The workman Thiru L. Raman and one Thiru Ranganathan who is presently working as an employee under the 3010-GI/92-6

Respondent, have given evidence as W.W. 1 and W.W. 2, the Director of the Respondent Farm and a Stockman deposed as M.W. 1 and M.W. 2 respectively. Exs. W1 to W5 and Exs. M-1 and M-2 have been marked. It is common case that the Petitioner W.W. 1, Thiru L. Raman has initially given the work of a casual labourer in October 1974. There is the further admission that the Petitioner was subsequently employed on adhoc basis or temporary basis in the job of Calf Attender from 1-4-1978. From April 1978 to November, 1978 the Petitioner has been engaged in that manner and he attended to the job excluding certain days or absences. M.W. 1 Thiru B. S. Singh who is the present Director of the Respondent, who is giving evidence only from his knowledge of the records, deposed that he is unable to produce the muster roll extracts prior to 22-6-1978. Ex. M. 2 series are the muster roll extracts for the period from 22-6-1978 to December, 1978. From these muster roll series we find that the Petitioner has been marked 'present' till 27-11-1978 and from the next day onwards he has been marked 'absent'. It is further evident that in the last month, namely November, 1978, the Petitioner has put in attendance only for 6-1/2 days since he has been absent in all the remaining days of November, 1978. The explanation given by W.W. 1 Thiru L. Raman is that he was ill during a good part of November, 1978 and hence he was forced to be absent. Ex. M.1 which is the extract showing the number of working days on which W.W. 1 worked reveals that he has actually worked for around 240 days in the twelve months period ending with 27-11-1978. The Petitioner was given the job in 1974 as a result of the death of his father who was also a casual employee under the Respondent, on a sympathetic grounds.

(7) When W.W. 1, Thiru L. Raman has been working from 1974 as a casual labourer and from 1978 as a labourer on adhoc basis the Respondent should have retrenched him by giving one month's notice or giving one month's notice pay. W.W. 1 and W.W. 2 have described a situation in which the then Director who is the elder brother of M.W. 1 was offended by a particular conduct of the Petitioner's mother and he harboured ill-feelings towards the family of W.W. 1. They have told that the Respondent's employees dumped rubbish and waste materials right in front of the house of W.W. 1 namely his mother's house and that the engaged mother collected the rubbish and throw the same back into the Farm of the Respondent and remonstrating against that conduct, the then Director went to the extent of assaulting W.W. 1's mother and within a two days he also deprived the Petitioner of his job. Whatever be the truth of such evidence, we have to accept the Petitioner's case that the Respondent's Director has illegally denied employment to the Petitioner on and from 28-11-1978. Interestingly the Petitioner has not completed 18 years of age even on 28-11-1978. W.W. 1 Thiru L. Raman who has just studied upto VIII standard has not taken the necessary legal steps for raising an Industrial dispute until 1986-87. He has approached the Assistant Commissioner of Labour (Central) sometime in 1986-87 after sending a Lawyer's notice to the Respondent on 1-11-1985. The Respondent's reply dated 9-1-1986 to the Lawyer's notice is Ex. W. 3. Hence obviously, W.W. 1 Thiru L. Raman failed to take efforts until 1-11-1985, after he was denied employment on 28-11-1978. Having regard to this very long delay, I think that it is not possible and it would not be desirable either to direct reinstatement of the Petitioner in service. It would be proper to direct the Respondent to pay suitable compensation to the Petitioner in the place of reinstatement. On a careful consideration of the evidence and circumstances, I find on Point No. 1, that the Respondent has denied employment to the Petitioner in an illegal manner and that it amounts to illegal retrenchment in the light of Section 25N of the Industrial Disputes Act, 1947. On Point No. 2, I find that the Petitioner shall be entitled to receive Rs. 12,000 as compensation under section 11-A of the Industrial Disputes Act and that he is not entitled to reinstate and back wages.

(8) In the result an award is passed directing the Respondent to pay Rs. 12,000 as compensation to the Petitioner-workman and this dispute stands dismissed in other respect. No costs.

Dated, this 29th day of July, 1992.

THIRU M. GOPALASWAMY, Industrial Tribunal

WITNESSES EXAMINED

For Workman :

W.W. 1—Thiru L. Raman (Petitioner-Workman).
 W.W.2—Thiru V. Ranagnathan.

For Management :

M.W. 1—Thiru B. S. Singh.
 M.W. 2—Thiru M. Radha.

DOCUMENTS MARKED

For Workman :

Ex. W. 1/30-12-78—Letter from the Petitioner-workman to the Management.
 Ex. W. 2/30-12-78—Certificate of posting for sending Ex. W. 1.
 Ex. W 3/9-1-86—Reply by the management to the Petitioner workman's lawyer's letter dt 1-11-85.
 Ex. W. 4/24-1-91—Letter from the Petitioner-workman to the Management's Advocate praying to produce the Attendance Register relating to the permanent employees for the period between 2-4-78 and 21-7-78.
 Ex. W. 5/27-6-87—Comments of the Director of the Management on the representation of the Petitioner-workman.

For Management :

Ex. M-1—Statement showing the details of number of days worked by the workmen in the Management-Farm from 4-10-74 to 27-11-78 (xerox copy).
 Ex. M-2—Xerox copy of attendance register for the period from 22-6-78 to 18-11-78.

नदे दिल्ली, 14 दिसम्बर, 1992

पा.आ.3157—आंतरिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुरूप में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धनकर्त्ता के संबंध में विवाजकों और उनके कर्मकारों के बीच, प्रबन्ध में निर्दिष्ट आंतरिक विवाद में आंतरिक अधिकरण तमिलनाडु, मद्रास के पंचपट को प्रकाशित करता है, जो वेदांग सरकार को 9-1-9-92 को प्राप्त हुआ था।

[संख्या एल-12012/176/88-प्र-III(ए)]

वी. एम. डेविड, वैदा प्रधिकारी

New Delhi, the 14th December, 1992

S.O. 3157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Tamil Nadu, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 9-12-92.

[L-12012/176/88-D.III(A)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU
MADRAS

Friday, the 23rd day of October, 1992

PRESENT:

Thiru M. Gopalaswamy, BSc., B.I.,

INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 9 OF 1989

(In the matter of the dispute for adjudication under Section 10(1) (d) of the Industrial Disputes Act, 1947, between the workman and the management of State Bank of India, Ltd, Madras-1).

Between

Thiru M. P. Ranganathan,
 No. 53, Sait colony, Second Street,
 Egmore, Madras-600008.

AND

The Chief General Manager,
 State Bank of India,
 21, Rajaji Salai, Madras-1.

Reference : Order No. L. 12012(176)/88-D.III(A), dt. 6-1-89 of the Ministry of Labour, Govt. of India.

This dispute coming on for final hearing on Wednesday the 29th day of July, 1992 upon perusing the reference, claim and counter statements and all other material papers and record and upon hearing the arguments of Tvl. Aiyar & Dolla and R. Arumugan, Advocates appearing for the workman and of Thiru T. S. Gopalan, Advocate appearing for the Management and the dispute having stood over till this day for consideration, this Tribunal made the following award.

AWARD

This dispute between the workman and the management of State Bank of India, Madras-1, arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947, by the Government of India, in its Order No. L-12012(176)/88-D.III(A), dated 6-1-89 of the Ministry of Labour, for adjudication of the following issue :

“Whether the management of State Bank of India, Madras is justified in dismissing without notice the services of Shri M. P. Ranganathan, Clerk w.e.f. 15-9-86? If not, to what relief the workman concerned is entitled to?”

2. The workman alleges in the claim statement as follows: While he was working as a Clerk under the Respondent-Bank, in its Mount Road Branch, he was served with a charge-sheet dated 22-10-84 under which he was charged with three heads of misconduct. The three heads are :

(i) The Petitioner borrowed a sum of Rs. 7000 from a customer Arul Gnanaprakasam, and thereby violated codified Staff's circulars.

(ii) The Petitioner has in the Saving Bank Account No. 8256 of the said Arul Gnanaprakasam made conflicting entries namely debt entries 18-3-82, 12-8-82 and 19-8-82 in the ledger accounts without making corresponding entries in the Pass Book and further he similarly made certain other entries in the duplicate pass book without making corresponding entries in the ledger book.

(iii) The third charge is that he has withdrawn Rs. 100, Rs. 700, Rs. 1800 on 18-3-82, 12-8-82 and 19-8-82 fraudulently for his own benefits without any source of authority of the account holder Arul Gnanaprakasam.

3. The Petitioner submitted his explanation on 28-11-84. The Respondent then conducted a domestic enquiry into the charges, as the Petitioner did not admit any of the three charges. The enquiry officer gave his report containing the findings namely that charges one and three were not proved but charge two alone was proved. However, the disciplinary authority differed from the enquiry officer's findings by holding that the charge No. 3 was also proved, besides charge No. 2. This conclusion of the disciplinary authority regarding Charge No. 3, is contrary to the evidence of P.W. 6 the

hand writing expert. The disciplinary authority gave notice to the Petitioner requiring him to show cause against the proposed punishment of dismissing the petitioner without notice. The Petitioner has sent his explanation dated 20-6-86. Pointing out that the findings are erroneous and that the proposed punishment is excessive. The disciplinary authority has passed the final order of dismissal dated 11-4-86 without duly considering the Petitioner representations. The Respondent has mis-interpreted the evidence and came to unreasonable conclusions. The Petitioner has already put in 15 years of unblemished service from 8-8-73 onwards. In passing the order of dismissal, the Petitioner's past record of good service has not been considered. The Appeal filed by the Petitioner has been dismissed by the Appellate Authority on 15-5-86, without any application of mind and without examining the merits and grounds of the case put forward by the Petitioner. In any event, punishment of dismissal is grossly disproportionate and severe. The Petitioner's entire family will get ruined if the Petitioner is deprived of his job as he is the sole bread winner of the family, consisting of his mother, wife and daughter. An award may be passed declaring that the dismissal of the Petitioner is unjust and directing the Respondent to reinstate the Petitioner in service and give him full back wages, continuity of service and all other attendant benefits.

4. The Respondent in its counter states as follows: According to the service conditions reflected in the codified SE staff circulars, no employee of the bank should place himself in pecuniary obligation to any of the constituents by any act of borrowing. The Petitioner had violated this rule banning any borrowing from a constituent by taking a loan of Rs. 7000 from Arul Ganaprasam holder of S.B. Account 8256, which was opened on 28-6-79 on the strength of Petitioner's introduction. The Petitioner has forged the signature of Arulganaprasam in withdrawal forms and got Rs. 1000, 700, 1800 on 18-3-82, 12-8-82 and 19-8-82 respectively and further he has made debt entries regarding these withdrawals in the ledger accounts only but not in the pass book. Later the Petitioner received Rs. 700 on 11-1-84, another amount Rs. 300 on the same date and Rs. 700 on 24-11-83 for the purpose of remittance into the Saving Banks Account No. 8256, that he made credit entries regarding these amounts in the pass book of the customer without making any entry in the ledger accounts and thereby held these 3 amounts with himself fraudulently. Thus the Petitioner has misappropriated Rs. 5200 by fraudulent withdrawals and also by fraudulent entrance to credit. When in February, 1984 after commission of the misappropriation, the customer wanted return of the pass book, the Petitioner tactfully paved the way for issuing the duplicate pass book and made a debit entry therein on 9-2-84 for Rs. 5200. On 9-4-84 Arulganaprasam came to the Branch and complained by producing duplicate pass book that a sum of Rs. 7000 should have been shown in the credit column of the pass book which contrarily showed only Rs. 594.45P. The counter clerk then on duty after verifying the duplicate pass book and ledger found that some entries made in the pass book were not reflected in the ledger book and vice versa and thus the conflicting entries between the ledger sheet and duplicate pass book came to light. The three spurious withdrawal forms relate to 18-3-82, 12-8-82 and 19-8-82, for Rs. 1000, Rs. 700 and Rs. 1800 respectively. The account opening application dated 28-6-79 signed by Arulganaprasam, the letter dated 1-9-84 signed by Arulganaprasam and connected papers were forwarded to handwriting expert Mr. Pitchandi for giving his opinion regarding the genuineness or otherwise of the signatures. The hand writing expert in his opinion stated that the person who put the signature reading Arulganaprasam or Arul in the S.B. Account opening application had not put the signatures in the disputed withdrawal forms purporting to bear the signatures of Arulganaprasam or Arul as a short form. Based on these materials a charge sheet was served upon the petitioner on 22-10-84. The Petitioner in reply to the charge sheet admitted that he had borrowed Rs. 7000 odd from Arul and he has repaid the same. He further stated in his reply that he made certain entries in the duplicate pass book relying upon the entries in jottings brought by

Arulganaprasam himself without looking into the entries in the ledger. He has denied the fraudulent withdrawals imputed to him on three dates.

5. At the domestic enquiry the management examined PWs. 1 to 6. The domestic enquiry officer gave his report containing the findings in which he has rightly concluded that the charges 2 and 3 have been proved. The Petitioner has given his written explanation against the proposed punishment. He was also given a personal hearing on 11-4-86. The disciplinary authority confirmed the provisional punishment of dismissal without notice for each of the two charges proved. The customer Arulganaprasam, being a friend of the petitioner, should have been examined by him as his defence witness. There is no merit in the petitioner's claim. The punishment of dismissal is just and appropriate. The I.D. is liable to be dismissed.

6. The points for determination arising in the I.D. are as follows :

- (1) Whether the findings on the charges 2 and 3 are bad and perverse and not sustainable?
- (2) Whether the punishment of dismissal (without notice is highly disproportionate ?

7. The delinquent workman M. P. Ranganathan began to serve under the Respondent as a Clerk from 1973 and he was working as such in the Mount Road Branch, Madras during the relevant period and for fairly long duration. The S.B. Account of Arulganaprasam, Account No. 8256 was itself opened on 28-6-79 only on the introduction of the account holder by the delinquent Kenganathan himself. The evidence shows that they have been friends all along. The three charges levelled against Ranganathan are briefly as follows: The first is borrowing a sum of Rs. 7000 from the account holder Arulganaprasam which violates the code of conduct. The domestic enquiry officer as well as the disciplinary authority have concluded that the first charge has not been proved.

8. The Second charge is composed of two sets of acts. The first set comprises three debits entries of Rs. 700, Rs. 1000, Rs. 1800 made by petitioner on 18-3-82, 12-8-82 and 19-8-82 respectively which were recorded in the ledger accounts of the savings account of Arulganaprasam but not in the pass book. The second set of acts consists of one debit entry dated 9-2-84 for Rs. 5200 and three credit entries of Rs. 700 and Rs. 300 on 24-11-83 and 11-1-84, all of which were recorded in the duplicate pass book but not recorded the ledger accounts. These omissions and commissions were allegedly done by the delinquent fraudulently, without knowledge and authority of Arulganaprasam and thereby the delinquent misappropriated Rs. 3500 and further these acts amounted to misconduct in terms of Sec. 521-4(J) of Shastri Award read with Desai Award. The third charge is an ancillary one derived from the first set of acts forming part of the second charge, namely fraudulent withdrawal of three amounts through debit entries aggregating to Rs. 3500. At the domestic enquiry the management Division as P.W.2, Subramani, another officer of the same division as PW.2, Srimathi Vimla Gopalan Manager of PB division as PW.3., Srimathi Vimla Gopalan Manager of PB division as PW.4 Shri Ganesan of the Regional office as PW.5 and hand writing expert Pichandi as PW.6. The finding recorded by the domestic enquiry officer are contained in pages 39 to 43 the typed set. In Ex. W.2 the explanation given by the delinquent employee to the charge sheet Ex. M.13 is that he has been taking financial help from the account holder Arulganaprasam who was working as an hotel employee at Madras, that he has helped the account holder Arul in securing the hotel employment, that he has repaid the loan amount to Arulganaprasam and that he has made certain entries in the duplicate pass book without looking into the relevant ledger entries by accepting the jottings of certain entries given to him by the customer. He stated that he did not withdraw the three amounts from the SB account of the customer that the three withdrawals have all gone to the customer himself and they were made under the signatures of the customer and that he would have helped the customer Arul in filling up the withdrawal forms

and credit voucher. At the domestic enquiry the customer and complainant Arulgnanaprasam who is claimed by the delinquent to be his friend for long time was not examined by the management. In the letter or complaint Ex. M.28, dt. 9-4-84 signed by the customer as M. Arul, he has alleged that from the time of opening of the saving banks account in June '79 he has left the pass book with the delinquent himself, that he had finally got the duplicate pass book only on 9-4-84 (marked as Ex. M.23), that the said pass book which should have rightly shown a credit balance of Rs. 7000 odd contains only a very smaller amount of Rs. 595.45p, and that he should get back the money lost. Though Ex. M.23 pass book is affixed with the stamp "duplicate" and its issued date is shown as 15-2-84, it contains all the entries starting right from the opening date 28th June, 1979. The entries in this duplicate pass book pertaining to 1982 do not disclose any entry made on 19-8-82 for the debit of Rs. 1800 which is largest among three items withdrawn. But it is entered against 3rd November, 82 and not 18th August. The Petitioner-delinquent has attacked in particular the findings of the disciplinary authority, on disagreeing from the finding of the domestic enquiry officer, on the 3rd charge, namely that the petitioner has misappropriated Rs. 3500 by making three fraudulent withdrawals. In the report of the disciplinary authority, he has mainly relied on the evidence of PW5, the investigating officer Ganesan which is that during his investigation, the delinquent has told PW5 that he has made wrong withdrawal entries and initialised the resulting (incorrect) balance amounts in the pass book. The investigating Officer PW5, Ganesan has told before the domestic enquiry officer that in spite of his best efforts he could not contact or meet the Account holder Arulgnanaprasam who was an employee of Hotel Gowrisankar, Purasawalkam, Madras. He further deposed that the delinquent Ranganathan had confessed his misconduct before him. This narrative part is found at page 30 of the typed set produced by the worker/Petitioner. The version given by PW5, regarding what he had heard from the delinquent Ranganathan in respect of acts of misconduct does not have either a clear or implied statement by Ranganathan that he has himself taken the amounts of withdrawals behind the back of the customer Arulgnanaprasam. What he has actually admitted before PW5 and as well as in his explanation Ex. W.3 in reply to Ex. W.2 in answer to the proposed punishment, is that he had made wrong debit entries based on the jottings given to him by Arulgnanaprasam, the customer. The three withdrawal slips Ex. M.4 to M.6 contain the purported signatures of Account holder reading as M. Arul. The handwriting expert PW. 6 Pitchandi in his report Ex. M.30 as well as in his evidence testified that the disputed signatures do not appear to have the same likeness and characteristics of the genuine signatures of the petitioner or Arulgnanaprasam. The expert witness gave a reply in cross examination to the question whether the author of writing marked as S.15 and S.16 is also the author of the questioned signatures marked as Q-1, Q-2 and Q-4 to Q-8 (which are the signatures on the withdrawal forms) that is, he cannot affirm that the authors of these two sets of signatures can be one and the same person. PWs. 1 to 4, who should be conversant with the handwriting of the petitioner-delinquent did not give any evidence to the effect that the entries in question were made by petitioner Ranganathan or were in his handwriting. Therefore considering the evidence as a whole, I am of the view that the disciplinary authority's findings that charge No. 3 namely withdrawal of amounts coupled with defalcation were made by the delinquent, in the absence of any evidence coming from the complainant Arulgnanaprasam. Hence the finding on charge No. 3, misappropriations of Rs. 3500 recorded by the disciplinary authority is liable to be set aside. The finding on charge No. 2, namely that the delinquent is guilty of having made wrong debit entries deserves to be upheld. The petitioner has pleaded for mercy in the matter of punishment. His family of which he is the sole breadwinner consists of his mother, wife and daughter. The wrong entries of debit on 18-3-82, 12-8-82 and 19-8-82 have been made by the delinquent in the duplicate pass book of his friendly customer who never cared to take away the original pass book from the delinquent for about 3 years. Further more, the account holder turned complainant has withdrawn his

complaint letter Ex. M.28 by giving Ex. M.29 letter dt. 1-9-84. In these circumstances, the punishment in respect of charge No 3, cannot be the extreme one of dismissal from service which is highly disproportionate to the misconduct of making false and incorrect debit entries. In these circumstances, I am of the view that the Petitioner deserves to be awarded a lesser punishment other than removal or dismissal or discharge from service. The Respondent is given liberty to visit any suitable minor punishment on the Petitioner delinquent. On the question of paying back wages the Petitioner need not be rewarded with full back wages for the entire period between the date of suspension and date of reinstatement. This deprivation shall be in addition to the minor punishment which the respondent can impose. Thus I hold that the Petitioner shall be paid half of the back wages from 22-10-1984 to 31st January, '89 (corresponding with the month of reference) and that for the remaining period till his reinstatement he shall be paid full back wages besides other benefits. I hold that subject to the right of the Respondent to impose minor punishment as pronounced above, the petitioner deserves to be punished as pronounced above, are answered accordingly.

(9) In the result, award is passed directing the Respondent to reinstate the Petitioner in service, pay him half the back wages from 22-10-84 to 31-1-89 and full back wages from 1-2-89 to the date of reinstatement, give him continuity of service and allow other attendant benefits. No costs.

Dated, this 23rd day of October, 1992.

.Sd/-

THIRU M. GOPALASWAMY, INDUSTRIAL TRIBUNAL

WITNESS EXAMINED

For both sides : None

Documents marked

For Workman

Ex. W.1 22-10-84—Suspensions order issued to workman Thiru M. P. Renganathan (xerox copy).

W.2 28-11-84—Explanation by the workman to Ex. W.1 (xerox copy).

W.3 20-3-86—Explanation by the workman to the management.

W.4 28-5-86—Appeal preferred by the workman against the dismissal order (xerox copy).

For Management

Ex. M.1. 28-6-79—Form for opening S B. Account of Thiru Arul Gnanaprasam (xerox copy)

M.2 28-6-79—Ledger sheet of Thiru Arul Gnanaprasam (xerox copy)

M.3 28-6-79—Xerox copy of pass book of Thiru Arul Gnanaprasam.

M.4 18-3-82—Savings bank withdrawal form for Rs. 1000 (xerox copy)

M.5 12-8-82—do for Rs. 7000 —do—

M.6 19-8-82—do for Rs. 1800 —do—

M.7 1-9-84—Savings Bank account closing form for Rs. 624-85 (xerox copy).

M.8 9-4-84—Letter from Thiru Arul Gnanaprasam to the Management (xerox copy).

M.9 3-5-84—Letter from The management to the workman (xerox copy).

M.10 1-9-84—Letter from Thiru Arul Gnanaprasam to the Management (xerox copy).

M.11 1-10-84—Investigation report (xerox copy).

M.12. 19-10-84—Opinion from Examiner of questioned documents—copy.

M.13. 22-10-84—Charge sheet issued to the workman.

M.14. 5-12-84—Enquiry notice (xerox copy).

M.15. 14-2-85—do—

M.16.—Proceeding of the enquiry officer (xerox copy).

M.17.—Findings of the enquiry officer.

M.18 6-3-86—Letter from the Disciplinary authority to the workman—copy.

Ex. M.19. 11-4-86—Dismissal order.

Ex. M.20. 2-7-86—Letter from the Management Bank to the workman intimating him that his appeal was dismissed—xerox copy.

M.21 Original of Ex. M.1.

M.22. —do— M.2

M.23. —do— M.3

M.24. —do— M.4

M.25. —do— M.5

M.26. —do— M.6.

M.27. —do— M.7.

M.28. —do— M.8.

M.29. —do— M.10

M.30. —do— M.11

M.31. —do— M.12.

M.32. —do— M.14

M.33. —do— M.15.

AND

Their workmen.

APPEARANCES :

For the Employer—Shri R. B. Pitale, Representative.

For the Workmen—Shri M. B. Anchan, Advocate.

INDUSTRY : Banking.

STATE : Maharashtra.

Bombay, the 13th November, 1992

AWARD PART-II

The Central Government by their order No. L-12012/129/87-D.II(A) dated 29th January, 1988 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

“Whether the termination of services of Shri R. B. Kotian, Sub-staff of Bank of Baroda, Bombay West Region, Bombay w.e.f. 10th July, 1985 without any enquiry etc. is justified? If not, to what relief the workman is entitled?”

2. The case of the workman Shri R. B. Kotian as disclosed from the statement of claim filed on his behalf by the President of Udupi Taluk Bank Employees' Association in short, is thus :

The said workman was appointed in the said bank as peon in January, 1978 at Bombay, and was confirmed in the said post in July, 1978. He was working honestly and sincerely, and his service record was clean and without any blemish. However the Regional Manager of the Bank of Baroda issued a show-cause notice dated 22nd January, 1985 to him to show cause why his services should not be terminated on the ground of his continuous/recurring ill health. The workman submitted his explanation on 8th February, 1985. Not being satisfied with that explanation, the Regional Manager by his letter dated 10th July, 1985 terminated the services of the workman w.e.f. 10th July, 1985. As the said workman was suffering from recurring ill health from 4th May, 1984 he could not attend to his duty in the Bank. He was on medical leave and was under medical treatment. Whenever he remained absent, he sent the medical certificates to the bank. He remained absent on valid grounds. The Doctors treating him advised him to go out of Bombay for the change of the climate, and preferably to his native place in South Canara. Accordingly the workman made representations to the bank authority for his transfer to South Canara or to Bangalore etc. However the bank did not accept his suggestion and the request. Before terminating the services, the bank did not issue any charge sheet to the workman for the alleged misconduct, nor any enquiry was held against him for the alleged misconduct. The workman was not given an opportunity to defend himself. As such the termination of his services is unjust, improper, illegal, and against the principles of natural justice. The bank had failed to get the workman examined by Registered Medical Practitioner or from the Hospital to ascertain whether he was fit to be retained in the bank's service before the termination of the services. The Union therefore lastly prayed that this Tribunal should hold the action of the bank management in question as unjust and illegal, and should direct it to reinstate him in service with full back wages and the continuity of service.

3. The Bank of Baroda by their Written Statement (Ex. M/3) opposed the said claim of the Bank Employees' Association, and in substance contended thus :

The Udupi Taluk Bank Employees' Association has no locus-standi to espouse the cause on behalf of the present workman Shri R. B. Kotian, that the President of the said Union is not competent to espouse

नई दिल्ली, 4 दिसम्बर, 1992

वा.आ. 3158—आंशिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार मे, केन्द्रीय सरकार, बैंक आफ बडोदा के प्रबंधन के संबद्ध नियोजकों और उनके कम्बारों के बीच, अनुबाद में निर्दिष्ट आंशिक विवाद में केन्द्रीय सरकार अंशिक अधिकरण, न. २, वर्ष १९४७ के प्रचलन के प्रकाशित करना है, जो केन्द्रीय सरकार को ५-१२-१९७८ को प्राप्त हुआ था।

[संख्या एल-12012/129/87-डी-२(ए)]

वा. के वेणुगोपालन, दैरेय अधिकारी

New Delhi, the 4th December, 1992

S.O. 3158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 4th December, 1992.

[No. L-12012/129/87-D.II(A)]

V. K. VENUGOPALAN, Desk Officer
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri P. D. Arshankar, Presiding Officer.

Reference No. CGIT-2/5 of 1988

PARTIES :

Employers in relation to the management of Bank of Baroda

the cause on behalf of the said workman before this Tribunal, and that no industrial dispute existed or exists between the said bank and its workmen concerning the said workman. As regards the merits of the case, the Bank Management contended thus :

The termination of his services of the said workman Shri R. B. Kotian, Bombay, with effect from 10th July, 1985 is just and legal, as the Bank has terminated the services of the said workman after complying with the provisions of para 522 of the Shastri Award which governs the service conditions of the bank employees. It is not true that the said workman was working sincerely, honestly, and without any complaint. His attendance was far from being satisfactory, and several officers had complained about his irregular attendance. He had joined the Bank as a peon in January 1978, and was posted at the Saki Naka Branch, Bombay. Due to his frequent absence, the work of the bank suffered considerably, as no replacement in his place could be made immediately. He used to remain absent on medical grounds, and was never submitting his medical certificates well advance in time. He used to send the medical certificates from the different doctors from Bombay, Bangalore and Udupi. During the period of 7 years of his service, he had availed of 522 days of leave on loss of pay in addition to the leave enjoyed by him for which he was paid the wages. He was referred to the Bank's medical officer Shri Dr. Nathwani, and he reported that the said workman was not suffering from any serious ailment and was fit to resume his normal duties. He was absent from duty from 4th May, 1984, and he was sending the medical certificates from Bangalore.

4. The Bank Management further contended thus :

In view of his continued absence from duty it was decided to issue a show-cause notice to him, and accordingly a show/cause notice dated 22nd January, 1985 was issued to him to show-cause why his services should not be terminated on the ground of recurring ill health. The workman sent his reply dated 8th February, 1985 to that notice and admitted that due to his ill health he could not attend to the office and requested the bank to consider his case sympathetically. He also requested the Bank to transfer him at his native place at Canara District on the ground that the weather there was suitable to his health. However, as his leave record was highly unsatisfactory, and as the explanation submitted by him was found unsatisfactory, the bank management terminated his services with effect from 10th July, 1985 on the ground of his continuous ill health, after giving him 3 months' pay in lieu of notice. He was discharged simpliciter from the service. It was not obligatory upon the bank to terminate the services of that workman on the ground of misconduct, and hence no charge sheet was issued to him before the termination of his service. It was not obligatory on the part of bank management to transfer the said workman from Bombay to the place of his choice. In case that is to be done, then, everybody from the bank will seek his transfer from Bombay to his or her native place, and the administration of the Bank will be affected adversely. The Bank management's action in terminating the services of that workman on the ground of his continued illness under the provisions of para 522 of the Shastri Award is just, proper and legal. The bank management therefore lastly prayed for the rejection of the prayer of the said Association.

5. The issues framed at Ex. 4 are :

- (1) Whether the workman proves that the termination of his services by the Bank, without holding any inquiry against him, is premature, unreasonable, against the principles of natural justice and as such, illegal ?
- (2) Does the Management of the Bank of Baroda prove that the Udupi Taluka Bank Employees' Association has no locus standi to espouse the cause on behalf of the present workman Shri R. B. Kotian ?

(3) Whether the President of the said Union is not competent to espouse the cause on behalf of the said workman before this Tribunal ?

(4) Whether no industrial dispute existed or exists between the said Bank and its workmen concerning the said workman ?

(5) Whether the termination of services of Shri R. B. Kotian, Sub-staff of Bank of Baroda, Bombay West Region w.e.f. 10th July, 1985 without any enquiry etc. is justified ?

(6) If not, to what relief the workman is entitled ?

(7) What Award ?

6. Issues No. 2, 3 & 4 were tried as preliminary Issues. By the Award Part-I dated 27th November, 1990, this Tribunal held that the Udupi Taluk Bank Employees' Association had locus standi to espouse the cause on behalf of the present workman Shri R. B. Kotian, that the President of said Association was competent to espouse the cause on behalf of the said workman before this Tribunal, and that the industrial dispute existed between the said bank and its workmen concerning the said workman.

7. My findings on the rest of the Issues are :

(1) No.

(5) Yes.

(6) N.I.

(7) As per below.

REASONS

8. Issues No. 5, 6 & 7

The workman concerned Shri R. B. Kotian filed his affidavit at Ex. 8 in support of his case, and he was cross-examined on behalf of the bank management. Shri T. A. Rajagopalan, the Personnel Officer of the Bank, filed his affidavit (Ex. 10) in support of the case of the bank management and he was cross-examined on behalf of the said Association. The workman admitted in his cross-examination that he hails from South Canara, that he has his relatives in South Canara, that during the period of 1982 to 1985 he remained absent for 522 days, that due to his ill health he had remained absent on those days, and that it was his leave without pay.

9. According to the Bank Management, the services of the said workman were terminated as per the provisions of para 522 of the Shastri Award, the provisions of which are binding upon the bank management and upon the bank employees. Further, according to the bank management the said workman was not removed from service on the ground of the misconduct on his part. Para 522 of the Shastri Award states that 'in cases not involving any disciplinary action for misconduct, the employment of the permanent employee may be terminated by three months' notice, or on payment of three months' pay and allowances in lieu of notice'. Therefore, no enquiry by the management is necessary against the workman in case he is removed from service for any reason other than the alleged misconduct on his part.

10. Before terminating the services of the said workman, a show cause notice dated 22nd January, 1985 (Ex. 19) was issued to him. That notice stated that :

"You have remained absent from duty on the grounds of ill health on the following occasions :

From 27-5-1982 to 12-7-1982

From 3-5-1983 to 6-5-1983

From 10-5-1983 to 24-5-1983

From 27-5-1983

From 1-6-1983 to 3-6-1983

From 7-6-1983 to 24-8-1983

From 22-2-1984 to 23-2-1984

From 28-3-1984 to 31-3-1984

From 5-4-1984 to 28-4-1984

From 4-5-1984 onwards.

On account of your continuous/recurring ill health, we are unable to utilise your services beneficially and this has been causing great hardship and inconvenience to the Bank.

As you are no longer in a position to discharge your duties to the Bank's satisfaction, you are hereby required to show cause within 10 days from the date hereof as to why your services should not be terminated on the grounds of your continuous/recurring ill health."

By his reply dated 8th February, 1985 (Ex. 23), the workman stated that : "I had remained absent, but it was with valid reasons. I do not deny the fact that I was not regular to the office. The Doctors treating me have opined that I should have a change of weather. Hence I request that I may be transferred to South Canara or to Bangalore, and my request be considered on humanitarian grounds". The Bank management by their letter dated 10th July, 1985 (Ex. 34) terminated the services of the said workman, which stated that :

"Your reply dated 8th February, 1985 has been considered, but found not to be satisfactory.

It has, therefore, been decided that your services shall stand terminated with effect from 10th July, 1985 after office hours of 10th July, 1985.

We send herewith a pay slip for Rs. 2,914.05 (Rupees two thousand nine hundred fourteen and paise five only) in lieu of 3 months' notice."

It is thus quite clear from the said letter of termination of workman's services that his services were not terminated because of any alleged misconduct on his part, and hence no departmental enquiry was necessary against him before arriving at the conclusion to terminate his services. His services were terminated, as he was remaining absent again and again on the ground of his ill health, which was affecting the day to day work of the bank adversely.

The workman has produced a number of applications made by him to the Bank management to get the leave on the ground of his illness. Those applications are thus : Ex. 12 is a copy of his application dated 27th July, 1984 to get the medical leave on the ground of his illness from 4th May, 1984. Thus he submitted that application more than two and half months after he fell ill and remained absent. The other applications are thus :

Period of leave applied	Applied on	Ex. No.
1-8-1984 to 19-8-1984	16-08-1984	13
30-8-1984 to 5-10-1984	20-09-1984	14
6-10-1984 to 6-11-1984	11-10-1984	15
29-11-1984 & onwards	19-11-1984	16
3-12-1984 to 19-1-1985	20-01-1985	17
30-1-1985 to 1-3-1985	31-01-1985	21
2-3-1985 to 31-3-1985	08-03-1985	24
1-4-1985 for 40 days	24-04-1985	27
10-5-1985 for 49 days	21-05-1985	30
2-7-1985 for 35 days	02-07-1985	32

According to the said Association, the bank management should have got examined the said workman from a medical officer to ascertain about the truth of his alleged illness before terminating his service with effect from 10th July, 1985. However, the workman himself had sent many medical certificates to the bank management regarding his illness and advising him complete rest during certain periods. Ex. 18 is a copy of the medical certificate dated 15th December, 1984 advising the said workman complete rest on medical ground for 58 days from 3rd December, 1984 to 29th January, 1985. The other medical certificates are thus :

Medical leave recommended from	Date of medical certificate	Ex. No.
30-1-1985 for 30 days	30-01-1985	22
2-3-1985 for 30 days	02-03-1985	25
24-4-1985 for 40 days	24-04-1985	28
10-5-1985 for 49 days	10-05-1985	31
27-6-1985 for 25 days	27-6-1985	33

It is thus quite clear from the documentary evidence on record as above that the services of the said workman were terminated on the ground of continuous/recurring illness, and not on the ground of any misconduct on his part. Therefore it was not at all necessary for the Bank management to hold any domestic enquiry against him before terminating his services, and I find that the termination of the services of the said workman was quite just, proper and legal, as per the provisions contained in the para 522 of the Shastri Award.

My attention was drawn on behalf of the bank management to the case reported in 1969 II LLJ page 800 between Tata Engineering & Locomotive V/s. Prasad, of the Supreme Court. It was held therein that :--

"The company had two courses either to act under the standing order empowering it to discharge the employee or to take disciplinary action against him and hold an enquiry. If the company had chosen to resort to standing order 47 for discharging the employee it would not be reasonably said that the company should have charged the workman with misconduct and held an enquiry. The fact that it did not hold an enquiry but resorted to exercise its powers of discharge under standing order 47 could not render its order of discharge mala fide or one passed in colourable exercise of its powers to discharge the workman from service, if such power was properly exercised. Even if there is an intervention by the employer preceding the passing of the order of discharge, it would be merely a discharge simpliciter and it would not be a punitive one issued for misconduct. Held in the instant case, the company had properly and justifiably exercised its power to discharge its employee under standing order 47."

In the case reported in 1977 LIC at page 602 between S. K. Kadam V/s. Dadajee Dhakjee & Co., it was held by the High Court, Bombay, that :--

"The employer may have been right to discharge his employee under the contract or rules. But existence of good reason based on objective facts is indispensable for discharge. There can be myriad reasons for such discharge including the act or omission amounting to misconduct. The employer is not bound to hold enquiry and visit the employee with penal action, even if such reason happens to be misconduct of the employee. It is only the absence of such reason, and not mere failure to hold enquiry, that would render

such discharge mala fide or an act in colourable exercise of power raising an inference of victimisation.

In cases of misconduct, it is open for the employer either to hold enquiry and dismiss the employee by way of punishment or discharge him and pay all retrenchment benefit. The employer has a choice to adopt either of the courses, provided such action is bonafide. The question of mala fide or acting in colourable exercise of power, cannot arise unless allegations set up are unfounded, and imaginary, and the action is motivated by some ulterior purpose.

Where the employee was discharged without enquiry on the ground that the employer lost confidence in him, when he was found working in other's garage privately after leaving the office on false pretext, the order of discharge on the ground of misconduct was held justifiably.

11. The said Association has relied upon the Judgment of the Supreme Court in the Civil Appeal No. 2449 (NL) of 1972 dated 16th November, 1977 between Western India Match Company Ltd. and Third Industrial Tribunal, West Bengal & Others. The facts in that case were that:

"the 2nd respondent was an employee under the appellant for a long number of years. There was no blemish in his service, and Shri Sachin Choudhury for the appellant has very fairly stated that there was no complaint against the services of the 2nd respondent while he was employed by it. But the 2nd respondent fell ill and applied for leave. It so happened that his illness persisted for a long time and the management, quite rightly granted him leave from time to time. On 4th November, 1963 his leave expired and on 5th November, 1963 the management invoking a clause in the contract of employment, terminated his employment. It is that order of termination that was set aside by the Industrial Tribunal and affirmed from Court to Court upto now."

The courts below held, and quite rightly in our view, that since the employee was all along on leave granted by the employer no question of incapacity or being incapacitated from properly discharging his duties arose.

Therefore, the facts of that case do not apply to the facts of the present case. In the case reported, the services of the workman were terminated because of a particular clause contained in the contract of employment. In the present case the workman's services have been terminated under para 522 of the Shastri Award. Therefore I find that the principle laid out in the said reported case does not apply to the facts of the present case.

12. I, therefore, find that the action of the bank management in terminating the services of the said workman without holding the enquiry was just, proper, and legal. As such, the workman is entitled to no relief.

Issues No. 1, 5 & 6 are, therefore found accordingly.

13. Eventhough in law the workman is not entitled to reinstatement, however as he made representations to the bank management after the termination of the services for his reinstatement in service, and as he moved the Assistant Labour Commissioner (Central) in the matter, and as he pursued the present reference, it is only suggested that in case the workman gives an undertaking in writing that he will serve in Bombay only and will not seek transfer to Southern India, the Bank management may appoint him as a fresh employee, if possible, and if permissible under rules. This is only a suggestion and not a direction.

In the result, the following award is passed:

AWARD

The termination of services of Shri R. B. Kotian, Sub-staff of Bank of Baroda, Bombay West Region, Bombay, w.e.f.

10th July, 1985 without any enquiry etc. is just, proper and legal.

The parties to bear their own costs of this reference.

13th November, 1992.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 13 नवम्बर, 1992

का.आ. 3159.—आंतर्राष्ट्रीय निवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुच्छेद में, केन्द्रीय सरकार, यक आक इंडिया के प्रबंधनात्मक कार्यकारी अधिकारी उनके कर्मकारों के याच अनुबंध में निर्दिष्ट आंतर्राष्ट्रीय विवाद में केन्द्रीय सरकार आंतर्राष्ट्रीय अधिकारण ने, 2 अगस्त के पश्चाट का प्रकाशित करता है, जो केन्द्रीय सरकार को 4-12-92 को प्राप्त कुप्रा था।

[नं.ला.एस-12011/20/88-डी.2(ए)]

मी.के.वेणुगोपालन, देस्क प्रधान/र्स

New Delhi, the 4th December, 1992

S.O. 3159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the Mgt. of Bank of India and their workmen, which was received by the Central Government on 4-12-92.

[No. L-12011/20/88-DII(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO 2 AT BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer.

REFERENCE NO. CGIT NO. 2/57 OF 1988

PARTIES :

Employer in relation to the management of Bank of India

AND

Their Workmen

APPEARANCES :

For the employer : Shri R. B. Pitale, Representative.

For the workman : Shri Anil Phoudar, Representative.

INDUSTRY : Banking

STATE : Maharashtra

Bombay, the 17th November, 1992

AWARD

The Central Government by their order No. L-12011/20/88-D.II(A) dated 7-12-1988 have referred the following Industrial Dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.

"Whether the action of the management of Bank of India in the appointment of special Assistants on the strength of clerical staff as on 31-12-1984 and 31-12-1985 in accordance with the settlement dated 6-2-1987 and industry-wise settlement dated 16-9-84 respectively, is justified? If not, to what relief are the concerned workmen entitled?"

2. The case of the Bank of India Workers Organization as disclosed from the statement of claim (Ex. W/2) filed by its Joint Secretary in short is thus :

The service conditions for the bank employees are governed by the Shastri Award, Desai Award and the different Bipartite Settlements as modified from time to time, and by the various circulars issued

by the Bank Management. The said provisions of the Awards etc. are binding upon the Bank Management also. The Bipartite settlement provides for the post of Special Assistant to be allotted to the employees working in the clerical cadre. The management have fixed the criteria on which was decided in the year 1970 and the same was continued in the year 1987. The criterias were that the posts of the Special Assistants would be created on the strength of the staff as on 31st of December of each year in a ratio of 12 to 1, and for determining the strength of the staff, a District/City was taken as a unit. All such posts were being filled in on the basis of the seniority of staff members working in a particular district/city zone as on 31st December, of every year. This process of allotment of the post of Special Assistant on the basis of the seniority continued in operation till 6-2-1987.

3. In the meanwhile an Industrywise Settlement was signed on 17-9-1984. Wherein it was decided that the post of special assistant would be filled in after the interview of the senior employees i.e. in addition to their seniority. This amendment was binding on the Bank Management also, as the Bank Management was a party to that settlement through the Indian Bank's Association. However the Bank Management instead of modifying the internal settlements/procedure of allotment of duties of Special Assistants, continued to fill in the post of special assistants, either newly created or fallen vacant with the old criteria i.e., on seniority basis. Accordingly, the posts fallen vacant/created in 1984 were filled in from amongst the senior staff members on the strength of the staff as on 31-12-1984 without any interview. Thereafter on 6-2-1987 a settlement was signed by and between the bank management and some unions of the workmen operating in the Bank. By that settlement the 'Process of Interview' was added to the old criteria of seniority for the selection of Special Assistants. That settlement was signed in supercession of all earlier internal settlements on the point of the allotment of special assistants posts, and it had only the prospective effect from 6-2-1987. The Bank Management filled in the vacancies arrived in upto 1-10-1986 on the strength of the staff in the respective districts/city zones as on 31-12-1985 by calling the staff for interview by applying the provisions of the settlement dated 6-2-1987. In fact the management should have filled in the vacancies of special assistants arrived in prior to 1-10-1986 as per the old criteria, i.e. only on the strength of seniority, as the settlement dated 6-2-1987 was effective for the post falling vacant on or after 1-10-1986.
4. In Pune City Zone and Ratnagiri District Zone, posts of Special Assistants were created w.e.f. 1-1-1986 on the strength of the staff as of 31-12-85. One Shri B.A. Godbole, the Clerk working in the Pune City Branch, and one Shri Jayant Purohit, the Clerk-Cashier working at Chiplun Branch, District-Ratnagiri, were the senior most respectively in the Pune City Zone and the Ratnagiri District Zone for the posts of special Assistants. As such on the basis of the seniority Shri Godbole in Pune City Zone and Shri Purohit in Ratnagiri District Zone were entitled to be posted/allotted on the posts of Special Assistants, as per the old procedure i.e. without applying interview test as per settlement dated 6-2-1987. However the Bank Management conducted the interviews for the posts of Special Assistants which was illegal, and after taking the interview, the said two employees were superseded and some other two employees who were junior to the said two employees, were allotted the post of Special Assistants, thereby depriving Shri Godbole and Shri Purohit of their legitimate claim. The result was that Shri Godbole and Shri Purohit were required to suffer a monetary loss of Rs. 436/- per month with effect from 1-1-1986.

5. Without prejudice to the abovesaid contentions of the Workers' Organization, that organization further alleged thus :

As the Bank Management was represented by Indian Banks' Association which had signed the industrywise settlement dated 17-9-1984, it was binding upon the Bank Management also, and they should have adopted and followed it. As such the bank should have conducted interviews for the posts of Special Assistants while filling those posts on the strength of staff as on 31-12-1984. However the Bank Management did not do so, and those posts were filled in/allotted as per the only seniority of the staff in their respective zones. As they had opted not to follow the criteria of interview even after the industrywise settlement, while filling up the posts of Special Assistants, it becomes the service conditions of the employees, and while again conducting the interviews in the year 1986, a notice of change is required to be issued by the bank under Section 9A of the Industrial Disputes Act. However the Bank management did not issue any such notice before signing the service conditions of the employees. As such the action of the Bank Management in conducting the interviews in 1986 on the strength of the staff as on 31-12-1985 is illegal and void. Therefore the action of the Bank Management in the appointment of Special Assistants on the strength of the clerical staff as on 31-12-1984 and 31-12-1985 in accordance with the settlement dated 17-9-1984 and 6-2-1987 is illegal and ab-initio-void.

6. The said workers' organization therefore, lastly prayed that this Tribunal should held that :—

- (i) The action of the Bank Management in not following the countrywise settlement dated 17-9-1984 and thereby not conducting the interviews while filling up the posts of Special Assistants on the basis of strength of staff as on 31-12-1984 is illegal;
- (ii) The settlement dated 6-2-1987 cannot be applied to the vacancies of the posts of Special Assistants created before 1-10-1986;
- (iii) The action of the Bank Management in applying the provisions of the settlement dated 6-2-1987 thereby conducting the interviews of the staff members and not allotting the post of special assistants merely on the basis of seniority while filling up the vacancies created w.e.f. 1-1-1987 on the strength of the staff as on 31-12-1985 is illegal;
- (iv) The action of the Bank Management in now allotting the posts of special assistants on the basis of seniority to Shri Godbole and Shri Purohit w.e.f. 1-1-1986 on the strength of the staff as on 31-12-85 is illegal. The Bank Management committed a breach of the provisions contained in Section 9A of the Industrial Disputes Act, and that Shri Godbole and Shri Purohit are entitled to be posted as Special assistants with necessary allowances thereof on the strength of the staff as on 31-12-1985 from the dates their juniors were posted as special assistants or from the dates of sanction of special assistants' posts, whichever is earlier, alongwith other consequential benefits as per the Bipartite Settlements.

7. The Zonal Manager, Pune Zone of the Bank of India by his Written Statement (Ex. M/3) contested the said claim of the said workers' organization, and in substance, contended thus :

The Joint Secretary of the said organization has no locus standi to file the present Statement of Claim on behalf of the workmen, as no specific authority given to that Secretary to espouse the cause on behalf of the workmen had been filed before this tribunal. The Bank of India Workers' Organization is a registered trade union and all important decisions are therefore taken by a resolution, which has not been done in the present case. 80 per cent

of the employees employed in the Bank are the members of the Bank of India Staff Union affiliated to All India Bank Employees Association. The said Staff Union is a recognized and sole collective bargaining agent. Therefore, the said workers' organization has no locus standi to espouse the cause of behalf of the workmen. No Industrial Dispute as contemplated under Section 2(k) of the Industrial Disputes Act exists in the present case, and as such this Tribunal has no jurisdiction to decide the present reference.

8. The Bank Management further contended thus :

The 1st Bipartite Settlement of 1966 laid down scheme for assignment of Special Allowance duties of various categories. "Special Assistant" is a category mentioned thereunder. The Bank of India the management agreed to create the aforesaid category of Special Assistant as per the request of the Federation of Bank of India Staff Unions in the year 1970. On 1-6-1972 the Bank of India entered into the settlement under the provisions of the Industrial Disputes Act, 1947. This settlement laid down the detailed procedure for the selection of the candidates of special assistants. The said settlement of 1-6-1972 was modified from time to time and on 31-8-1977 the various provisions in the various earlier settlements were consolidated and were brought out in one single document. This settlement dated 31-8-1977 was also modified from time to time by supplementary settlements arrived at on 7-7-1978, 9-6-1979, 9-10-1980, 11-2-1982, 24-3-1983 and 18-8-1983. It is true that the conditions of the bank employees are governed by the industrywise Bipartite Settlements. These industry wise settlements do not however automatically modify the other settlements pertaining to the individual banks; where such modifications are neither specifically intended or specifically brought about.

9. The Bank management further contended thus :—

Eventhough the element of the interviews in the matter of selection of Special Assistants was introduced by the settlement dated 17-9-1984, this settlement would not and infact did not legally modify the settlement arrived at by the Bank of India with its Federation. The matter about giving effect to the settlement dated 17-9-1984 was taken up by the Bank of India with the Federation of Bank of India Staff Union, and the element of interviews in a matter of selection of candidates to be assigned duties of Special Assistant was given effect to and incorporated in the settlement dated 6-2-1987. Thus in the Bank of India the element of interviews was brought about by the Settlement dated 6-2-1987. When the Settlement signed under the provisions of the Industrial Disputes Act is modified again in accordance with the provisions of that Act, the giving effect to the modification does not require a notice under Section 9A of the Industrial Disputes Act. The employees of the Bank of India including the members of the workers organization who have raised the Industrial Disputes, have been assigned the duties of special Assistants and they have accepted that assignment, in accordance with the individual settlement between Bank of India and its federation. The individual settlements of the Bank of India has been in effect accepted and recognised by the said workers organization also. While the first settlement was signed in the year 1971, the workers' organization challenged it for the first time after about 16 to 17 years, and there before that organization had accepted all the benefits arising from that settlement. The action of the Bank management in conducting interviews for the post created on or after 1-10-1986 was proper and in accordance with the settlement dated 6-2-1987. The industrywise settlement does not automatically modify an independent and separate settlement signed by an individual Bank with its federation in

accordance with the provisions of the Industrial Disputes Act. The internal settlement dated 6-2-87 is applicable to the post created on or after 1-10-86. The action of the Bank Management is in accordance with the various settlements signed with the Bank of India Staff Union affiliated to All India Bank Employees Association. Therefore the Bank Management lastly prayed for the rejection of the prayer of the Bank of India Workers' Organization.

10. Issues framed at Ex. 4 are :

- (1) Whether the present Lt. Secretary of the Bank of India Workers' Organization has no locus standi to file the statement of claim on behalf of the workmen of that organization ?
- (2) Whether the said organization has no locus standi to espouse the cause of their workmen ?
- (3) Whether no industrial dispute within the meaning of Section 2(k) exists between the Bank management and the workmen ?
- (4) Whether this Industrial Tribunal has no jurisdiction to entertain and decide the present reference ?
- (5) Whether the Bank management did not follow the industrywise settlement dated 17-9-1984 in the matter of appointments of Spl. Assistants, and if so, whether the action of the Bank management in not conducting the interviews while filling the posts of Spl. Assistants on the basis of the staff as on 31-12-1984 is improper and illegal ?
- (6) Whether the settlement dated 6-2-1987 cannot be applied to the vacancies of Spl. Assistants created before 1-10-1986 ?
- (7) Whether the action of the management in applying the provisions of the settlement dated 6-2-1987, and thereby conducting the interviews of the staff, and not allotting the posts of Spl. Assistants merely on the basis of seniority while filling up the vacancies created w.e.f. 1-1-1986 on the strength of the staff as on 31-12-1985, is improper and illegal ?
- (8) Whether the action of the management in not allotting the posts of Spl. Assistants on the basis of Seniority to Shri B. A. Godbole and Shri Jaywant Purohit in the posts created in Pune City and Ratnagiri District Zone respectively w.e.f. 1-1-1986 on the strength of staff as on 31-12-1985 is illegal ?
- (9) If so, to what relief, if any, they are entitled ?
- (10) Whether the Bank management has violated the provisions of Sec. 9A of the I. D. Act, in the matter of selection for the posts of Spl. Assistants ?
- (11) Whether the action of the management of Bank of India in the appointment of Special Assistant on the strength of clerical staff as on 31-12-1984 and 31-12-1985 in accordance with the settlement dated 6-2-1987 and industrywise settlement dated 17-9-1984 respectively is justified ?
12. If not, to what relief are the concerned workmen entitled ?
13. What Award ?
14. My findings on the said issues are :

 - (1) Has Locus standi.
 - (2) has locus standi.
 - (3) Industrial dispute exists.
 - (4) has jurisdiction.
 - (5) No.
 - (6) Yes.
 - (7) Yes.

(8) Yes.
 (9) as per final order below.
 (10) No.
 (11) No.
 (12) as per the final order below.
 (13) as per below.

REASONS

12. ISSUE NOS. 1 to 4 :

According to the Bank Management, the Bank of India Workers' Organization has no locus standi to espouse the cause of their workmen, that the present joint secretary of that Organization has no locus standi to file the Statement of claim on behalf of the workman of that organization, that no Industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act exists between the Bank Management and the workmen and that this Tribunal has no jurisdiction to entertain and decide the present reference. According to the Bank Management, as the said workers' Organization is the minority union, it has no locus standi to espouse the cause of their workmen. However these and the other contentions of the Bank management cannot be accepted in law and in fact. An industrial dispute, as defined under Section 2(k) of the Industrial Disputes Act, means any dispute or difference between the employers and the workmen connected with the employment or non employment or the terms of employment of any person. Therefore the dispute must be between an employer and the workmen. However it does not mean that the dispute must be between an employer and the workmen of the majority union. Even if a minority union represents a substantial number of workmen, I find that in such a case an industrial dispute exists between the parties. Admittedly the Bank of India Workers' Organization is a registered trade union. My attention was drawn on behalf of the organization to the case reported in 1990 LIC page 494 between Navabharat Nagpur Petitioner Vs. Nagpur Union of Working Journalists and others. Wherein it was held that;

"Though a dispute between an employer and a single employee cannot per se be an 'industrial dispute', but it can become one, if it is taken up by the trade union or a number of workmen. The present dispute is also taken up by the Union, who have made a concerted demand on behalf of the working journalists to set right the grievance against their employer—the Petitioner Navabharat. There can be no doubt that the dispute referred for adjudication of the Industrial Tribunal is nothing but an industrial dispute as defined under the Act."

13. Further the Bank's witness Shri S. S. Vanikar (Ex. M13) admitted in his cross-examination that the Bank of India had entered into an agreement with the Bank of India Workers' Organization regarding the individual grievances of the employees. Ex. 15 is a copy of the Memorandum of Settlement dated 6-3-1984 entered into by the Bank of India and the said workers' Organization before the Assistant Labour Commissioner regarding the timings of the Bank employees. Therefore as the Bank Management had in the past discussion with the said workers' Organization even though a minority union and even though the bank management had entered into the said settlement with that workers' Organization on certain points, there is no reason why that workers' Organization should not be competent to raise the Industrial dispute in question. I therefore find that the said workers' organization is competent to raise the Industrial dispute in question, and that an Industrial Dispute exists between the parties and as such this Tribunal has jurisdiction to entertain and decide the present reference. The witness of the said organization Shri A. R. Phoudar, at present the Joint secretary of that workers' organization, stated in his affidavit (Ex. W-14) that he was the Joint Secretary of that organization upto 5-2-1990, and that at present he is the joint secretary of that organization, that the joint secretary of that organization was duly authorised by the organization to raise the Industrial dispute by proper resolution, and that the bank has signed settlements with

their organization in cases involving individual disputes or policy matters disputes. As such I find that the present Joint Secretary of the Bank of India Workers' Organization has locus standi to file the statement of claim on behalf of the workers of that organization.

ISSUE NOS. 1 to 4 are therefore found accordingly.

14. Shri S. S. Vanikar, the Chief Manager, Personnel Department, Bombay, filed his affidavit Ex. 12 on preliminary points i.e. regarding the tenability of the present reference. Shri A. R. Phoudar, the Joint Secretary of the Bank of India Workers' Organization filed his affidavit (Ex. W-14) on preliminary points. Shri V. V. Joshi, the Industrial Relation Officer of the Bank filed his affidavit (Ex. M-17) on the merits of the case. All these three witnesses were cross-examined on behalf of the respective other side. The documentary evidence on record is thus :

Ex. M111 is a copy of the letter dated 15-9-1970 by the General Manager of the Bank, regarding the creation of category of special Assistant in the Bank. This letter stated that the bank has now decided to create the category of special Assistant at various branches of the bank in the country. This letter further stated that for the selection of persons to work as special assistants, a list of members of the clerical staff would be prepared on the basis of the seniority cum qualifications. As such, it is clear from this letter (Ex. 11) that the employees of the clerical staff were to be promoted to the post of special assistants on the basis of their seniority cum qualifications, and this came into existence since 1970.

Ex. M10 is a copy of the Memorandum of Settlement between the Bank of India and the Federation of the Bank of India Staff Union, i.e. the majority union, dated 1-8-1972. It is seen therefrom that the said parties had mutually arrived at the settlement of the certain issues including the issue regarding the assignment of the duties of special assistants.

Ex. 7 is the copy of the another Memorandum of settlement dated 31-8-1977 between the said parties. This settlement also stated that for the selection of the special assistants, a list of members of the clerical staff would be prepared on the basis of service cum qualifications as on 1st or January of every year. As such the post of the special assistants is to be assigned to a particular employee on the basis of his seniority cum qualifications.

15. Ex. 8 is a further settlement dated 6-2-1987 between the Bank of India and the Federation of Bank of India Staff Unions, this is an important and material document in the present reference. Clause 2 on page 3 of that settlement stated that,—

"the provisions of this Settlement, unless specifically provided otherwise, would be effective for vacancies of special assistants arising on or after 1st October, 1986".

Thus this settlement is to come into force with effect from 1-10-1986. This settlement further stated that (vide page 7) from amongst the eligible candidates, the necessary number of the employees would be called for interview, and the interview of the eligible candidates would be taken by the interviewing committee. As such, this settlement dated 6-2-1987 (Ex. M8) introduced for the first time the element of taking the interview of the eligible candidates for the purpose of their selection for the post of special assistants, and as noted above this method is and was to take effect from 1-10-1986. It is thus quite clear from this settlement dated 6-2-1987 and the earlier settlements dated 1-6-1972 and 31-8-1977, and the banks letter dated 15-9-1970 (Ex. 11) that for filling in the vacancies of the special assistants of the period prior to 1-10-1986, the eligible candidates were to be considered for the post of special assistants on the basis of their seniority in service.

16. Ex. 10 is a list of the employees of the bank who were called for interview for the post of special assistant in November 1986. It is seen therefrom that the employee Shri Godbole was called for interview but was not selected for the post of special assistant, and that certain 3 employees

who were junior to him were called for the interview and were selected for the post, of special assistants. Further, the employee Shri J. M. Purohit was also called for interview but he was not selected. However these employees even though called for interview after 1-10-1986, were to be selected for the post falling vacant during years 1984 and 1985 and as such they should have been selected for the post of special assistant on the basis of their seniority, and not by applying the principle of interview.

17. ISSUE NO. 5

It was urged on behalf of the said organization that the bank management did not follow the industrywise settlement dated 17-9-1984 in the matter of appointment of special assistant, and that in not conducting the interviews while filling the posts of special assistants on the basis of the staff as on 31-12-1984 it was improper and illegal. However, as noted above, the element of interview came into force only from 1-10-1986. Further at the time of the arguments the said organization admitted that the said action of the bank management was not improper and illegal, but that it was proper and legal.

Therefore issue No. 5 is found in negative.

18. ISSUE NO. 6

According to the organization, the settlement dated 6-2-1987 (Ex. 8) cannot be applied to the vacancies of the special assistants created before 1-10-1986. This contention of the organization is quite tenable in law, as the said settlement clearly stated that it should come into force from 1-10-1986. Therefore issue No. 6 is found in the affirmative.

19. ISSUE NO. 7

According to the said organization, the action of the management in applying the provisions of the settlement dated 6-2-1987 and thereby conducting the interviews of the staff and not allotting the post of special assistants merely on the basis of seniority while filling up the vacancies created with effect from 1-1-1986 on the strength of staff as on 31-12-1985, is improper and illegal, as noted above, as per the banks letter dated 15-9-1970 (Ex. 11) the vacancies of the special assistants were to be filled in on the basis of the seniority cum qualifications and the element of the interview was introduced for the first time by the settlement dated 6-2-1987 which was to come into effect from 1-10-1986. Therefore the action of the bank management in question is not proper and legal.

Issue No. 7 is therefore found in the affirmative.

20. ISSUE NO. 8

According to the said organization, the action of the Bank Management in now allotting the posts of special assistants on the basis of seniority to Shri Godbole and to Shri Purohit in the posts created in Pune city and Ratnagiri district Zone with effect from 1-1-1986 on the strength of staff as on 31-12-1985 is illegal. As the said posts were to be filled in with effect from 1-1-1986, and not from 1-10-1986, the said two employees should have been considered for the said post on the basis of their seniority, and not by applying the test of interview to them. As such the action of the bank management in the matter is illegal.

Issue No. 8 is therefore found in the affirmative.

21. ISSUE NO. 9

Therefore, the said two employees shall be deemed to be posted on the posts of the special assistants from the dates their juniors were posted on their posts and they will be entitled to all the consequential monetary benefits. They will also stand above their juniors in the list of the selected candidates for the post of special assistants.

Issue No. 9 is found accordingly.

22. ISSUE NO. 10

Firstly the posts of the special assistants were to be filled in on the basis of the seniority. Later on by the settlement dated 8-2-1987, the necessary candidates were to be interviewed and were then to be selected if found fit. According to the said organization, while making this change the bank management did not comply with the provisions of section 9-A of the Industrial Disputes Act, and has committed a breach

of those provisions. As per section 9-A, before effecting the proposed change, the necessary prior notice is to be given to the workmen. However the proviso to Section 9 states that no notice shall be required for effecting any such change when the change is effected in pursuance of any settlement or award. In the present case, the change has been effected by the settlement dated 6-2-1987 between the said parties. Therefore I find that the bank management did not commit any breach of the provisions contained in section 9-A of the Industrial Disputes Act.

Issue No. 10 is therefore found in the negative.

23. ISSUE NO. 11

As noted above, in the matter of the appointments of special assistants on the strength of the clerical staff as on 31-12-1984 and 31-12-1985, they should have been considered for those posts on the basis of their seniority only, and not by applying the principle of interview introduced by the settlement dated 6-2-1987. Therefore the action of the bank management in the appointment of special assistants on the strength of the clerical staff as on 31-12-1984 and 31-12-1985 in accordance with the settlement dated 6-2-1987 and industrywise settlement dated 17-9-1984 is not justified and legal.

Issue No. 11 is therefore found in the negative.

As such, the concerned employees are entitled to the relief as mentioned below, Issue No. 12 is found accordingly.

In the result, the following award is passed.

AWARD

The action of the management of Bank of India in the appointment of special assistants on the strength of clerical staff as on 31-12-1984 and 31-12-1985 in accordance with the settlement dated 6-2-1987 and industrywise settlement dated 17-9-1984 is not justified and legal.

Shri B. A. Godbole and Shri Jaywant Purohit shall be deemed to be posted on the posts of special assistants from the dates their juniors were posted on those posts, and they shall be paid by the bank management all the necessary consequential benefits of those posts from those dates. They shall stand above their juniors in the list of the selected special assistants.

The parties to bear their own costs of this reference.

Dated : 11th November, 1992.

P. D. AP SHANKAR, Presiding Officer

नई दिल्ली, 8 दिसम्बर, 1992

का.आ. 3160.—केन्द्रीय सरकार का समाधान हो गया है कि शोकहिन में ऐसा अविभाग है कि नीमेंट उद्योग में सेवाओं को जिसे शोकहिन विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविधि 3 के अन्तर्गत नियिष्ट किया गया है, उक्त अधिनियम के प्रयोजनों के लिए उपर्योगी सेवायें घोषित किया जाना चाहिए।

प्रत: अब शोकहिन विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के अंडे (५) के उपकांड (६) द्वारा प्रदत्त अधिनियम का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तकाल प्रभाव से छ: नाम की कालावधि के लिए शोक उपर्योगी सेवा घोषित करती है।

[संख्या एस-11017/13/85-की १(२)]

एन. एस. परामर्श, मंत्री सचिव

New Delhi, the 8th December, 1992

S.O. 3160.—Whereas the Central Government is satisfied that the public interest requires that the services in the Cement Industry which are covered by entry 3 in the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purpose of the said Act;

Now, therefore, in exercise of the powers conferred by clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act for a period of six months.

[No. S-11017/13/85-D.I(A)]
S. S. PRASHER, Under Secy.

अमं भंगालय

नई दिल्ली, 9 दिसंबर, 1992

का. ना. 3161—न्यूतम मन्दूरो अधिनियम, 1948 (1948 का 111) की धारा 26 की उपधारा (2) द्वारा प्रवत्त शक्तियों का प्रयोग करते हुए फेलीय सरकार बम्बई पोर्ट ट्रस्ट के अन्तर्गत कार्यरत फ्लोटिला कर्मकारों के कार्यधारों, अवकाश विवास और अतिरिक्त समय के संबंध में लागू विशेष विनियमों के संबंध में एन्डव्हारा यह निर्देश देता है कि सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से तीन वर्षों की अवधि के लिये उक्त अधिनियम की धारा 13 एवं 14 के प्रावधान निम्नलिखित शहों पर उक्त कर्मचारियों पर लागू नहीं होंगे:—

(i) बम्बई पत्तन्यास, विनियमों की एक पुस्तिका के रूप में अंग्रेजी भाषा में और ऐसी भाषा या भाषाओं में प्रकाशित करायेगा जिसे अधिकतर कर्मचारी समझते हों;

(ii) उपरोक्त विनियमों में कोई संशोधन करने के पूर्व बम्बई पत्तन व्यास संबंधित कर्मचारियों को प्रस्तावित संशोधनों की सूचना देने के लिये नीटिस देगा, इस नीटिस की उपरोक्त पत्तन व्यास के कार्यालय के सूचना पट्टा पर लागाया जायेगा और ऐसी सभी आपत्तियों और सुनामों पर विचार करेगा जो नीटिस देने की सारी बाइक से इकलीस दिन के भीतर प्राप्त हों, और

(iii) उपरोक्त अध्य (i) में निर्दिष्ट पुस्तिका की एक प्रति और उसमें किये जाने वाले प्रत्येक संशोधन की एक प्रति प्रत्येक संबंधित कर्मचारी को उपलब्ध करायी जायेगी।

[संख्या एस/32014/1/91-इन्वू सी (एम बम्बई)]

भारीक घोष, संयुक्त सचिव

New Delhi, the 9th December, 1992

S.O. 3161.—In exercise of the powers conferred by sub-section (2) of Section 26 of the Minimum Wages Act, 1948 (11 of 1948), the Central Government, having regard to the special regulations in force in respect of the duty hours, rest day and overtime of the Flotilla Workers working under the Bombay Port Trust, hereby directs that provisions of section 13 and 14 of the said Act shall not apply to the said employees for a period of three years with effect from the date of publication of this notification in the Official Gazette, subject to the following conditions, namely:—

- The Bombay Port Trust shall publish the said regulations in a pamphlet from in the English language or languages understood by the majority of the employees;
- before making any amendments to the aforesaid regulations, the Bombay Port Trust shall inform the employees concerned, by notice to be put up on the notice board at the Office of the aforesaid Port Trust, of the proposed amendments and shall consider any objections or suggestions that may be made in respect thereof by persons likely to be affected thereby within twenty one days of such notice; and
- a copy of the pamphlet referred to in condition (i) above and a copy of every amendment thereto shall be supplied to each employee concerned.

[F. No. S-32014/1/91-WC(MW)]

ABHIK GHOSH, Jr. Secy.

नई दिल्ली, 10 दिसंबर, 1992

का. ना. 3162—लौह अवस्था बान मैग्नीज अवस्था बान तथा और अवस्था बान अम कलापन निधि, नियम 1978 के नियम 3 के उप नियम (2) के साथ पठित लौह अवस्था बान, मैग्नीज अवस्था बान तथा और अवस्था बान अम कलापन निधि अधिनियम, 1976 (1976 का 61) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केल्ड्रीय सरकार, एन्डव्हारा महाराष्ट्र राज्य के लिए निम्नलिखित शक्तियों को सामिल करते हुए, एक सलाहकार समिति गठित करती है:—

(1) अम संबी	महाराष्ट्र सरकार, बम्बई	अवधार
(2) कलापन आमायन	अम कलापन संगठन नागपुर	उपाध्यक्ष (पदेन)
(3) केल्ड्रीय अमायन (केल्ड्रीय) नागपुर	सदस्य (पदेन)	
(4) उप महानिवेशक, महानिवेशक बान सुराळा, नागपुर	सदस्य (पदेन)	
(5) श्री अग्रोक धार्ड, सदस्य विधान सभा, बम्बई	सदस्य विधान सभा	
(6) श्री एम के. बेनुगोपल प्रबन्धक कार्यालय मैग्नीज अवस्था (इंडिया) लि. नागपुर	नियोक्ताओं के प्रतिनिधि	
(7) श्री सी एच. छिंसी, महा प्रबन्धक मिनरल एन्सेप्लारेशन कापों, लि.	- वहाँ-	
(8) श्री आर. के. शर्मा भूख्य फार्मिक प्रबन्धक मानिकगढ़ निमेट पो. श्री. गांधीनगर-449908 गिला- अग्रपुर (महाराष्ट्र)	- वहाँ-	
(9) श्रीमती भाल्ती रहीकार ग्राम्यक सिंद मजदूर सभा विष्वर्ध दोर, नागपुर	कर्मकारों के प्रतिनिधि	
(10) श्री ए. पी. तिवारी महासचिव राज्यीय मैग्नीज मजदूर यंथ नागपुर	- वहाँ-	
(11) श्री बसनत लोकान्धे रीमुल कमेटी मैम्बर संयुक्त बादान मजदूर संघ लालकर्णडा यूनियन बांध विजाली तल—तुमासर गिला- भारारा	- वहाँ-	
(12) कलापन प्रशासक अम कलापन संगठन नागपुर	- वहाँ- - सचिव	

[संख्या पृ-- 19012/12/90 उम्मी-II सी]

दी. दी. गगर, अमर सचिव

New Delhi, the 10th December, 1992

S.O. 3162—In exercise of the powers conferred by section 5 the Iron Ore Mines Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976 (61 of 1976) read with sub-rule (2) of rule 3 of Iron Ore Mines, Manganese Mines and Chrome Ore Mines Labour Welfare Fund Rules, 1978, the Central Government hereby constitutes an Advisory Committee for the State of Maharashtra consisting of the following members :

(1) Labour Minister, Government of Maharashtra, Bombay.	Chairman
(2) Welfare Commissioner, Labour Welfare Organisation, Nagpur.	Vice-Chairman (Ex-officio)
(3) Regional Labour Commissioner (C) Nagpur.	Member (Ex-officio)
(4) Deputy Director General, Directorate General of Mines Safety, Nagpur.	Member (Ex-officio)
(5) Shri Ashok Dhawad, Member of Legislative Assembly, Bombay.	Member of Legislative Assembly.
(6) Shri M.K. Venugopal, Manager Personnel, Manganese Ore (India) Ltd., Nagpur.	
(7) Shri C.H. Khisty, General Manager (P&A) Mineral Exploration Corporation Limited Nagpur.	Employers' Representatives.
(8) Shri R.K. Sharma, Chief Personal Manager, Manikgarh Cement, P.O. Gadchandur-449 908, District Chandrapur (M.S.)	—do—
(9) Smt. Malti Ruikar, President, Hind Mazdoor Sabha, Vidarbha Division Nagpur.	
(10) Shri A.P. Tiwari, General Secretary, Rastriya Manganese Mazdoor Sangh, Nagpur.	Employees' Representatives.
(11) Shri Vasant Leckhade, Central Committee Member, Sayucta Khadeen Miyadu Sangh, Lal Zenda Union Branch, Chikhali Tal-Tumasar, District Bhandara	—do—
(12) Welfare Administrator, Labour Welfare Organisation, Nagpur	—do— Secretary.

[No. U-19012/12/90-W-II(C)]

V.D. NAGAR, Under Secy.

नई विल्सन, 10 दिसम्बर, 1992

का. ना. 3163.—मूल पत्थर और डोलोमाइट आन अम कल्याण निधि नियम, 1973 की धारा 3 की उप-धारा (2) के संशय पठित अधिकार और डोलोमाइट आन अम कल्याण निधि प्रबन्धित, 1972

(1972 का 62) की धारा 6 द्वारा प्रश्न अविधि का प्रयोग करते हुए केन्द्रीय सरकार एवं द्वारा आधिक प्रवेश राज्य के लिए एक समिति गठित करती है जिसमें निम्नलिखित सदस्य शामिल हैं, अर्थात्—

1. श्रम मंत्री, आधिक प्रवेश सरकार, हैदराबाद	प्रध्यक्ष
2. कल्याण आयुक्त, अम कल्याण संगठन, हैदराबाद	उपाध्यक्ष (पदेन)
3. केन्द्रीय अमायुक्त (केन्द्रीय) — हैदराबाद	केन्द्रीय सरकार के प्रतिनिधि (पदेन)
4. श्री के. रामसूपाल रेडी, विधान सभा सदस्य, एवं वायम, करनूल जिला	विधान सभा सदस्य
5. श्री वी. जगन्नाथन, महाप्रबंधक, मध्यास सीमेंट लि., जयस्तीपुरम तालुक, जगन्नाथपेट कर्णाटका	नियोजकों के प्रतिनिधि
6. डा. शीघ्रादी, निदेशक, मानव सीमेंट सन्डलोक कम्पनीस, सरोजिनी देवी रोड, सिक्कावराबाद	—, —
7. श्री विल्सन बैंकटेप्परलू, जिला प्रध्यक्ष, आरसीय राष्ट्रीय ट्रेइंग मूलिकत कांप्रेस, बिजयवाडी-3	कर्मजातियों के प्रतिनिधि
8. श्री सी. मुरले, केंद्रीय सीमेंट फैक्टरी, डाकघर बसंतगढ़, जिला करीमनगर-505187	—, —
9. श्रीमती सुभद्रा रेडी, धारा बी. एल. के. रेडी, रोड नं. 11, बंजारा हिल्स, हैदराबाद	महिला प्रतिनिधि
10. कल्याण प्रशासक, अम कल्याण संगठन, हैदराबाद	तंत्रज्ञ
2. केन्द्रीय सरकार, एवं द्वारा द्वारा भूमिका नियन्त्रित करती है।	

[सं. य०-19012/4/86—प्रभृति II (सं.)]

वा. श्री. नगर, अमर सदिक

New Delhi, the 10th December, 1992

S.O. 3163—In exercise of the powers conferred by section 6 of the Limestone & Dolomite Mines Labour Welfare Fund Act, 1972 (62 of 1972) read with sub-rule (2) of rule 3 of the Limestone and Dolomite Mines Labour Welfare Fund Rules, 1973, the Central Government hereby constitutes an Advisory Committee for the State of Andhra Pradesh Consisting of the following members, namely :—

1. Minister of Labour, Government of Andhra Pradesh, Hyderabad.	Chairman
2. Welfare Commissioner, Labour Welfare Organisation, Hyderabad.	Vice-Chairman (Ex-officio)
3. Regional Labour Commissioner (C) Hyderabad.	Central Govt. Representative (Ex-officio)
4. Shri K. Ramboopal Reddy, Member of Legislative Assembly, Pahyam, Kurnool District.	Member of Legislative Assembly.
5. Shri V. Jagannadhan, General Manager, Madras Cements Limited, Jayan'hipuram Taluk, Jaggaiahpet, Krishna District.	Employer Representatives
6. Dr. Seshadri, Director, Andhra Cements, Chandralok Complex, Sarojini Devi Road, Secunderabad.	—do—
7. Shri Pilla Venkateswarlu, District President, Indian National Trade Union Congress, Vijayawada-3.	Employee's Representatives.
8. Shri C. Murali, Kesoram Cement Factory, Basantnagar P.O. Karimnagar District, Pin-505 187	— do —
9. M/s. Subhadra Reddy, C/o B. K. Reddy, Road, No. 11, Banjara Hills, Hyderabad.	Women Representative.
10. Welfare Administrator, Labour Welfare Organisation, Hyderabad.	Secretary,

2. The Central Government hereby fixes Hyderabad to be the headquarters of the said Advisor's Committee.

[No. U-19012/4/86-W-II(C)]

V.D. NAGAR, Under Secy.

नई विल्सों, 10 दिसम्बर, 1992

का. प्रा. 3164.—गत: मैसर्स पॉलामी अन्धावर मिल्स (टी एन 48) और मैसर्स सरोजा मिल्स (टी एन 73) (इसके पारे जहाँ कहीं भी उक्त स्थापना शब्द का प्रयोग हो इससे अभिप्राय उक्त स्थापना से है) ने कर्मचारी भविष्य निधि और प्रकारण उपचार अधिनियम, 1952 (1952 का 19) इसके पारे उक्त अधिनियम के नाम से निर्दिष्ट) को घारा 17 की उपधारा (1) के ऊंच (क) के अंतर्गत छूट प्राप्त करों के लिए प्राप्ति दिया है।

यह केन्द्र सरकार की राय में उक्त स्थापना के कर्मचारियों के लिए सियार किए गए भविष्य निधि नियमों में अंशदाता भी दर उक्त अधिनियम की 148 ; वे उल्लिखित कर्मचारी अंशदाता की दर से कम नहीं है तथ्

इसके कर्मचारियों को मिलने वाले भविष्य निधि द्वारा उक्त अधिनियम तथा कर्मचारी भविष्य निधि स्कीम, 1952 (इसके पारे जहाँ कहीं भी स्कीम शब्द का प्रयोग किया गया है उससे अभिप्राय उक्त स्कीम से है) में उल्लिखित लामों से किसी भी प्रकार से कम नहीं है जो इस वर्ग की स्थापनाओं में कार्यस्त कर्मचारियों को उपलब्ध है।

बब इसलिए उक्त अधिनियम की घारा 17 को उपधारा एक के ऊंच (क) द्वारा प्रदत्त भविष्य नियमों का प्रयोग करते हुए और संलग्न अनुसूची में विभिन्न शर्तों के अधीन केन्द्रीय सरकार इसके द्वारा उक्त स्थापना की उक्त स्कीम के सभी उपबन्धों के लागू होने से छूट प्राप्त करती है।

मनुसूची

1. उक्त स्थापना से संबंधित नियोजना केन्द्र सरकार के द्वारा समय समय पर दिए गए नियमों के अनुसार उक्त अधिनियम की घारा 17 की उपधारा (3) के ऊंच (क) में उल्लिखित नियोजना के लिए सुविधाएं प्रदान करेगा और ऐसे नियोजना प्रभार की अवधारणा प्रत्येक माह को समाप्ति के 15 दिन के मध्य रखेगा।

2. न-छूट प्राप्त स्थापनाओं के संबंध में उक्त अधिनियम और उसके अधीन सुनित उक्त स्कीम के अंतर्गत देय अंशदाता की दर से स्थापना के भविष्य निधि नियमों के अंतर्गत देय अंशदाता का दर किसी समय भी कम न होगी।

3. नियमियों के मामले में छूट प्राप्त स्थापना की रही अंशदाता भविष्य निधि स्कीम, 1952 से कम हितकर नहीं होगी।

4. उक्त स्कीम में कोई भी संशोधन जो स्थापना के वर्तमान नियमों से अधिक लाभकारी है उन पर अपने आप लागू किया जाएगा। उक्त स्थापना के भविष्य नियमों में कोई भी संशोधन, केन्द्रीय भविष्य निधि आयुक्त की पूर्व अनुमति के बीच नहीं किया जाएगा और जहाँ किसी संशोधन से उक्त स्थापना के कर्मचारियों के हित के प्रतिकूल प्रभावी होने की सम्भावना है वहाँ अपनी अनुमति देने से पूर्व, केन्द्रीय भविष्य निधि आयुक्त, कर्मचारियों को अपने विकार प्रस्तुत करने का उचित असर देगा।

5. यदि स्थापना की छूट न दी जाती तो वे सभी कर्मचारी (जो उक्त अधिनियम की घारा 2(व) में नियन्त्रित नियमों के अनुसार अधिनियम के पात्र हों) सश्य बनाए जाएंगे।

6. जहाँ एक कर्मचारी जो कर्मचारी भविष्य निधि (कानूनी) या किसी अन्य छूट-प्राप्त स्थापना का पहले से सदस्य है, को अपनी स्थापना में काम पर लगाया जाता है तो वे नियोजना उसे नियम का तुरन्त सदस्य बनाएगा और ऐसे कर्मचारी के पिछले नियोजना के पास भविष्य निधि लेखे में संबंधित कराते और उसके लेखे में जमा कराने को अवश्य करेगा।

7. केन्द्रीय भविष्य आयुक्त के द्वारा भविष्य केन्द्रीय सरकार के द्वारा जैसे भी मामला हो, समय समय पर दिए गए नियमों के अनुसार भविष्य निधि के प्रबन्ध के लिए नियोजना द्वारा दी गई की स्थापना करेगा।

8. भविष्य निधि, न्यासी बोर्ड में निहित होता है जो प्रत्येक वर्ष कार्य करेगी। केन्द्रीय भविष्य निधि आयुक्त को अधिकार होता है कि वह किसी अन्य योग्य लेखा परिषद से खातों को बुखारा लेखा परीक्षा कराएं और ऐसे पूँजी लेखा परीक्षा के बारे में जारी करेगा।

9. न्यासी बोर्ड कम से कम 3 माह में एक बार बैठक करेंगे और केन्द्र सरकार द्वारा समय-समय पर जारी कर गए नियमों के प्राप्ति कार्य करेंगे। केन्द्रीय भविष्य निधि आयुक्त को अधिकार होता है कि वह किसी अन्य योग्य लेखा परिषद से खातों को बुखारा लेखा परीक्षा कराएं और ऐसे पूँजी लेखा परीक्षा के बारे में जारी करेगा।

10. न्यासी बोर्ड द्वारा रखे गए भविष्य निधि लेबे ग्रहीता प्राप्त निष्पक्ष बाटौर अकाउन्टेन्ट द्वारा वार्षिक लेखा परीक्षा के प्रधारीन द्वारा जहां आवश्यक समझा जाए, केन्द्रीय भविष्य निधि आयुक्त का किसी अन्य ग्रहीता प्राप्त लेखा-परीक्षा द्वारा लेखों की पुनः लेखा परीक्षा कराने के अधिकार होगा और इस पर तुम्हा अन्य न्यासी द्वारा वहन किया जाएगा ।

11. प्रत्येक वर्ष स्थापना के लेखा पर्वतित तुलन-पक्ष के साथ लेखा पर्वतित वार्षिक भविष्य निधि लेखों की एक प्रति वित्तीय वर्ष की समाप्ति के छ: माह के बावर लेखीय भविष्य निधि आयुक्त को प्रस्तुत की जाएगी। इस प्रयोजन के लिए भविष्य निधि का वित्तीय वर्ष पहली प्रतीक्षा से 31 मार्च तक होगा ।

12. नियोक्ता प्रतिसाह भविष्य निधि के बेत्र अपने कर्मचारियों अंशदाताओं को आगामी माह की 15 लाखीय तक न्यासी बोर्ड को अंतरित कर देंगा। [अंशदाताओं की विस्थ से अदायगी करने के लिए समाप्त परिस्थितियों में नियोक्ता नुकसानी देने का उत्ती प्रकार उत्तरदायी होगा जिस ब्रकार एक न-हूँद प्राप्त स्थापना उत्तरदायी होती है ।

13. न्यासी बोर्ड सरकार द्वारा समय-समय पर दिए गए नियोजितों के अनुसार निधि में जमा राशियों का नियोजन करेगा। प्रतिशूलिया न्यासी बोर्ड के नाम पर प्राप्त की जाएगी और आर्टीय रिजर्व बैंक के जमा नियोजन के में अनुसूचित बैंक की अधिकारी से रखा जाएगा ।

14. सरकार के नियोजितों के अनुसार नियोजन न करने पर न्यासी बोर्ड अपार-अपार रूप से बाहर एक साथ केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधियों द्वारा जगाए गए अधिक प्रभाव का उत्तरदायी होगा ।

15. न्यासी बोर्ड एक बस्तु-म्पोरा रजिस्टर तैयार करेगा और आज और बिनोधन धार्य की समय पर बस्तुली मुनिषित करेगा ।

16. जमा किए गए अंशदाताओं, नियोजितों गए और प्रत्येक कर्मचारी से संबंधित आज की विवादों के लिए न्यासी बोर्ड विस्तृत लेखा तैयार करेगा ।

17. वित्तीय लेखा वर्ष की समाप्ति के छ: माह के अन्वर बोर्ड प्रत्येक कर्मचारी को वार्षिक लेखा विवरण जारी करेगा ।

18. बोर्ड प्रत्येक कर्मचारी को वार्षिक लेखा विवरण के स्वान पर पासबुक जारी कर सकता है। ये पासबुक कर्मचारियों को अधिकारों में रहेंगे और कर्मचारियों के प्रस्तुतीकरण पर बोर्ड के द्वारा इन्हें प्रदत्त कर्या जाएगा ।

19. लेखा वर्ष के पहले दिन आविष्य-सेव पर प्रत्येक कर्मचारी के लेखे में आज उस दर से जमा किया जाएगा जिसका न्यासी बोर्ड नियंत्रण करे परन्तु यह उक्त स्कीम के पैरा 60 के अंतर्गत केन्द्रीय सरकार द्वारा अधिकार दर से कम नहीं होगा ।

20. यदि न्यासी बोर्ड केन्द्रीय सरकार द्वारा अधिक आज की दर इस कारण से कि नियोजन पर आवधि कम है या किसी अन्य कारण से भदा करने में असमर्पि है तो इस कमी को नियोजना पूरा करेगा ।

21. नियोक्ता भविष्य निधि की ओरी के कारण सूटब्लोट, क्यान्त, गवन अधिकारी किसी अन्य कारण से हुई हानि की पूरा करेगा ।

22. नियोक्ता और न्यासी बोर्ड, केन्द्रीय भविष्य निधि आयुक्त को ऐसी विवरणियों प्रस्तुत करेगा जो समय-समय पर केन्द्रीय सरकार/केन्द्रीय भविष्य निधि आयुक्त निर्धारित करें ।

23. उक्त स्कीम के पैरा 69 की शैली पर किसी कर्मचारे को निधि के सवर्य म रहने पर यह स्थापना के भविष्य निधि नियमों में नियोक्ताओं के अंशदाताओं को जाह्न करने की व्यवस्था है तो न्यासी बोर्ड इस प्रकार जब्त को गई राशियों का अलग से लेखा तैयार करेगा और उसे ऐसे प्रयोजनों के लिए उपयोग करेगा जो केन्द्रीय भविष्य निधि आयुक्त की पूर्व अनुमति से मुनिषित किया गया हो ।

24. स्थापना के भविष्य निधि नियमों में निर्धारित किसी बात के होते हुए भी यदि किसी अधिक की जेवा निवृति द्वारे के फरमावन्द या किसी अन्य प्रतिष्ठान में जोकरी करने पर निधि की सदस्यता संशाल हो जाती है या पता लगता है कि प्रतिष्ठान के भविष्य निधि नियमों के अन्तर्गत अंशदाता की दर सम्पत्ति को दर जारि संविधिक योजना के अन्तर्गत दी गई दरों की तुलना में कम अनुहृत है तो प्राप्त न हो वहन नियोक्ता द्वारा किया जाएगा ।

25. नियोक्ता, भविष्य निधि के प्राप्तात्मा से संबंधित सभी वर्ष नियमों में स्कीम के अंशदाता रिटर्न प्रस्तुति जाने, राशियों का अन्तरण प्राप्ति है, वहन करेगा ।

26. नियोक्ता सञ्चित प्राविकारी द्वारा अनुमोदित निधि के नियमों की एक प्रति तथा जब भी कोई संशोधन होता है, उसकी मुद्रा बातों के कर्मचारियों के बहुमत की धारा में अनुवाद करके स्वाप्ता के बोर्ड पर लगाएगा ।

27. "समुचित सरकार" स्थापना का चालू दृढ़ पर भी वहन समाप्त की है ।

28. यदि उक्त अधिनियम के अंतर्गत स्थापना वर्ष जितने उसको स्थापना भासी है, पर अंशदाता की दर अडापो जाती है, तो उक्ता भविष्य निधि अंशदाता की दर उचित सभ में बढ़ाएगा, ताकि उक्त अधिनियम के अंतर्गत विद्युत जाने वाले लाभों से स्थापना को द्वीप के प्रांतों [दिए जाने वाले भविष्य निधि के लाभ किसी भी प्रकार से कम न हों ।

29. उक्त शर्तों में से किसी एक के उत्तरवर पर दूर एक की जा सकती है ।

[स. एस.—35015/15/92-एस. एस.-II]

जे. पी. गुलाला, प्रबन्ध सचिव

New Delhi, the 10th December, 1992

S.O. 3164.—Whereas Messrs M/s. Palani Andavari, (TN/49), Regd. M/s. Saroja Mills (TN/73) (hereinafter referred to as the said establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the said Act),

And whereas in the opinion of the Central Government the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the said Act or under the Employees' Provident Funds Scheme 1952 (hereinafter referred to as the said Scheme in relation to the employees in any other establishment of similar character;

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions specified in the schedule annexed hereto the Central Government hereby exempts the said establishment from the operation of all the provisions of the said Scheme.

SCHEDULE

1. The employer in relation to the said establishment shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of section 17 of the said Act within 15 days from the close of every month.

2. The rate of contribution payable under the provident fund rules of the establishment shall at no time be lower than those payable under the said Act in respect of the un-

exempted establishments and the said Scheme framed thereunder.

3. In the matter of advances, the scheme of the exempted establishment shall not be less favourable than the Employees Provident Fund Scheme, 1952.

4. Any amendment to the said scheme which is more beneficial to the employees than the existing rules of the establishment shall be made applicable to them automatically. No amendment of the rules of the provident fund of the said establishment shall be made without the previous approval of the Regional Provident Fund Commissioner and where any amendment is likely to affect adversely the interest of the employees of the said establishment, the Regional Provident Fund Commissioner shall before giving his approval, give a reasonable opportunity to the employees to explain their points of view.

5. All employees (as defined in section 2 of the said Act/ who would have been eligible to become members of the Provident Fund had the establishment not been granted exemption shall be enrolled as members.

6. Where an employee who is already a member of the Employees Provident Fund (Statutory) or a provident fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll his as a member of the fund and arrange to have the accumulations in the provident fund account of such employee with his previous employer transferred and credited to his account.

7. The employer shall establish a Board of Trustees for the management of the Provident fund according to such directions as may be given by the Central Provident Fund Commissioner or by the Central Government, as the case may be, from time to time.

8. The provident fund shall vest in the Board of Trustee who will be responsible for and accountable to the Employees Provident Fund Organisation inter-alia for proper accounts of the receipts into and payments from the Provident Fund and the balances in their custody.

9. The Board of Trustees shall meet at-least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Fund Commissioner or an officer authorised by him.

10. The accounts of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent Chartered Accountant annually. Where considered necessary, the Central Provident Fund Commissioner shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

11. A copy of the audited annual provident fund accounts together with the audited balance sheet of the establishment for each accounting year shall be submitted to the Regional Provident Fund Commissioner within six months after the close of the financial year. For this purpose the financial year of the provident fund shall be from the 1st April to the 31st of March.

12. The employer shall transfer to the Board of Trustees the contributions payable to the Provident fund by himself and the employees by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay damages to the Board of Trustees for any delay in payment of the contributions in the same manner as an un-exempted establishment is liable under similar circumstances.

13. The Board of Trustees shall invest the monies in the fund as per directions that may be given by the Government from time to time. The securities shall be obtained in the name of the Board of Trustees and shall be kept in the custody of scheduled bank under the Credit Control of the Reserve Bank of India.

14. Failure to make the investments as per directions of the Government shall make the Board of Trustees severally

and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

15. The Board of Trustees shall maintain a script wise register and ensure timely realisation of interest and ensure timely realisation of interest and redemption proceeds.

16. The Board of Trustees shall maintain detailed accounts to show the contributions credited, withdrawal and interest in respect of each employee.

17. The Board shall issue an annual statement of account to every employee within six months of the close of financial/accounting year.

18. The Board may, instead of the annual statement of accounts, issue Passbooks to every employee. These pass book shall remain in the custody of the employee and will be brought up to date by the Board on presentation by the employee.

19. The account of each employee shall be credited with interest calculated on the opening balance as on the 1st day of the accounting year at such rate as may be decided by the Board of Trustees but shall not be lower than the rate declared by the Central Government under para 60 of the said scheme.

20. If the Board of Trustees are unable to pay interest at the rate declared by the Central Government for the reason that the return on investment is less or for any other reason then the deficiency shall be made good by the employer.

21. The employer shall also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

22. The employer as well as the Board of Trustees shall submit such returns to the Regional Provident Fund Commissioner as the Central Government/Central Provident Fund Commissioner may prescribe from time to time.

23. If the Provident Fund rules of the establishment provide for forfeiture of the employees contributions in cases where an employee ceases to be a member of the fund on the lines of para 69 of the said Scheme, the Board of Trustees shall maintain a separate account on the amounts so forfeited and may utilise the same for such purpose as determined with the prior approval of the Central Provident Fund Commissioner.

24. Notwithstanding any thing contained in the Provident Fund Rules of the establishment, if on the cessation of any individual from the membership of the fund consequent on retiring from service or on taking up the employment in some other establishment, it is found that the rate of contribution rate of forfeiture etc., under the P.F. Rules of the establishment are less favourable as compared to these under the statutory Scheme, the difference shall be borne by the employer.

25. The employer shall bear all the expenses of the administration of the Provident Fund including the maintenance of accounts, submission of returns, transfer of accumulations.

26. The employer shall display on the notice board of the establishment, a copy of the rules of the fund as approved by the appropriate authority and as and when amended thereto alongwith a translation of the salient points thereof in the language of the majority of the employees.

27. The "appropriate Government" may lay down any further condition for continued exemption of the establishment.

28. The employees shall enhance the rate of provident fund contributions appropriately if the rate of provident fund contribution is enhanced under the said Act so that the benefits under the Provident Fund Scheme of the establishment shall not become less favourable than the benefits provided under the said Act.

29. The exemption is liable to be cancelled for violation of any of the above conditions.

नं० विल्ली, 14 दिसम्बर, 1992

का, भा. ३१६५.—ओर्डोगिक विवाद अधिनियम, 1947 (1947 का १४) की धारा १७ के अनुमति में, केन्द्रीय सरकार, मैमर्सी सी. सी. एल. की धीरी कोषारी के प्रबन्धसत्र के संबद्ध नियोजकों और उनके कमेकारों के बीच, अनुबंध में निर्दिष्ट ओर्डोगिक विवाद में केन्द्रीय सरकार ओर्डोगिक अधिकरण, (म. १), वनवाद के पंचपट का प्रकाशित करती है, जो केन्द्रीय सरकार को ८-१२-१९९२ की प्रात द्वारा था

[प. नं.—२४०१२/३१/८८ ए।-१४ (वी)।/८८-१४ (५)]

एच. मर. याद, डैस्क मैमर्सी

New Delhi, the 14th December, 1992

S.O. 3165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dhori Colliery of M/s. CCL and their workmen which was received by the Central Government on 8-12-1992.

[No. L-24012/31/88-D.IV(B)/D.IV(A)]
HARISH GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947
Reference No. 138 of 1988

PARTIES:

Employers in relation to the management of Dhori Colliery of M/s. C. C. Ltd.

AND

Their Workmen.

PRESENT:

Shri S. K. Mitra, Presiding Officer.

APPEARANCES:

For the Employers : Shri R. S. Murthy, Advocate.

For the Workmen : Shri M. K. Sengupta, Advocate.

STATE : Bihar

INDUSTRY : Coal.

Dated, the 25th November, 1992

AWARD

By Order No. L-24012/31/88-D-4(B)/D-4(A), dated, the 31st October, 1988, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Dhori Colliery of M/s. C. C. Ltd. in refusing Clerical Gr. I to Shri Prayag Mahata with effect from 17-8-1972 and consequential benefits is justified? If not, to what relief the workman concerned is entitled and from what date?

2. The case of the management of Dhori Colliery of Dhori Area of M/s. C. C. Ltd., as disclosed in the written statement-cum-rejoinder, details apart, is as follows :

The present industrial dispute is an overstate one as it has been raised after 16 years. The dispute has been raised by the sponsoring union as an afterthought. Dhori Colliery belonged to private Coal Company and the ownership was

under dispute which led to appointment of a Receiver by the Sub-Judge, Hazaribagh for management of the colliery. The colliery was nationalised with effect from 1-5-1972. Since it was a coking coal mine, it was to be taken over by M/s. B. C. C. Ltd. Coking Coal Mines were nationalised with effect from 1-5-72 under Coking Coal Mines (Nationalisation) Act, 1972. Prior to that, the management of coking coal mines was taken over by the Central Government with effect from 17-10-71 by a Presidential Ordinance. The receiver appointed by the Sub-Judge, Hazaribagh, refused to hand over Dhori Colliery to the Custodian or B.C.C. Ltd. and litigation ensued. Ultimately the Receiver was forced to hand over the colliery to M/s. B.C.C. Ltd. with effect from 17-8-72. The Central Government transferred the ownership of the above colliery and a few other neighbouring coking coal mines which were also nationalised to N.C.D.C. which was also a public sector company with effect from 17-8-1972. N.C.D.C. has since renamed as M/s. Central Coalfields Ltd. with effect from 1-11-1975. In terms of Section 17(1) of the Coking Coal Mines (Nationalisation) Act, the services of the workers who were on the rolls of the colliery was taken over by the successor management with effect from 17-8-1972. However, this section has been repealed by the Coal Mines Nationalisation Laws (Amendment) Act, 1986 with effect from 7-10-86. From 17-8-72 when the Receiver handed over the colliery to M/s. B.C.C. Ltd. the clerical workers were assigned different duties. In the process the concerned workman who was in Clerical Grade-III was allowed to continue to perform the same duties as before of Clerical Grade-III. Some of the other clerks who were assigned different duties keeping in view of their educational qualifications from 17-8-72. The concerned workman was entrusted with the duties of L.D.C./Clerk Grade-II with effect from 1-10-1972. The question of placing clerical workers in appropriate clerical grades was examined by the management through a Committee in 1974 and the workman concerned was placed in the post of clerical Grade-II with effect from 1-10-1972. Some other clerks were placed in different appropriate clerical grades considering the nature of duties entrusted to them from 17-8-1972 and also taking into account their qualifications, experience etc. In the above process, the clerks who started performing the duties in the higher category were placed in such higher categories from 17-8-1972 or from the date from which they started performing duties of the higher posts. While reclassifying the workers the management through the aforesaid Committee also interviewed the candidates and took also written test. The results of the same were taken into account while reclassifying the clerical staff. As a result of the process of reclassification of the clerical staff, the workman concerned was entitled to be placed in clerical Grade-II with effect from 1-10-72 and he was accordingly placed in such a post. After reclassification and placement in different appropriate clerical grades/posts, the clerical staff were required to take their chance for promotion to higher post alongwith others according to the vacancies and on the basis of selection based on merit-cum-seniority. In due course the concerned workman was promoted to the post of U.D.C./Clerical Grade-I with effect from 15-3-86 and he is accordingly working in such post from that date. In the context of above facts the concerned workman is not entitled to be placed in the post of Clerical Grade-I from 17-8-72 or any later date. He was promoted in normal course to the post of clerical Grade-I with effect from 15-3-86. Hence, there is no scope for the concerned workman being entitled to the emoluments or any other benefits in respect of the post of Clerk Grade-I from 17-8-72. Such a demand is absolutely without any basis and liable to be rejected. The concerned workman did not perform the duties of clerical Grade-I/U.D.C. till 15-3-86. The management has submitted that if such stale demands are entertained, it will unsettle the settled matters and prayed that the instant dispute be rejected.

3. The case of the concerned workman, as appearing in the written statement submitted on his behalf by the sponsoring union, Koyla Mazdoor Union, briefly stated, is as follows :

Prayag Mahata, the concerned workman, is a permanent workman employed as an Accounts Clerk at Dhori Colliery of Dhori Area of M/s. C.C. Ltd. He is covered N.C.W.A.III and was earlier covered by the recommendations of Central Wage Board for the Coal Mining Industry and later by N.C.W.A. I and II. As per grading and nomenclature of

clerical staff as formulated by the Central Wage Board for the Coal Mining Industry which came into effect from 15th August, 1967. Accounts Clerks were placed in clerical Grade-II. Prayag Mahttha, the concerned workman, joined the service under the erstwhile management of Dhori colliery on 1-1-69. Consequent upon the take over of the said colliery from the private owners by M/s. B.C.C.L. and later by N.C.D.C. the case of the concerned workman, who is a matriculate was examined alongwith others including Anirudh Jha who was not properly designated at the time of take over. Anyway, Anirudh Jha was placed in Clerical Grade-II with effect from 17-8-72 but the concerned workman was placed in that grade from 1-10-72 for reasons not explained. N.C.D.C. upgraded all such Accounts Clerks who were employed by them, and were originally placed in clerical Grade-II to Grade-I with effect from 15-8-67 which has remained operative even today. The management of Dhori Colliery has allowed the grade and scale of clerical Grade-I to some of their clerical staff, namely, Anirudh Jha, Sadanand Jha and others who were originally in a lower grade and scale of pay and who were junior to the concerned workman with retrospective effect from 17-8-72 while the case of the concerned workman was denied the above clerical Grade-I without any reasonable cause. Seo Shankar Pandey and Tapeshwar Singh were Chaprasi in lower scale of pay. They requested to the management in 1973 that they were matriculates and they should be allowed to work in the office as clerk or in the mine as munshi. The management graciously placed them in clerical Grade-II with effect from 17-8-1972. Repeated representations were made by Koyla Mazdoor Union (H.M.S.) for his upgradation/regularisation in clerical Grade-I, which has been allowed to other clerical staff, who are junior to him, but the management did not consider the case of the concerned workman. Thereafter the dispute was raised by the sponsoring union before the Asstt. Labour Commissioner (C), Hazaribagh. But due to indifferent, unsympathetic, adamant and unreasonable attitude of the management, the conciliation proceeding ended in failure. The appropriate Government has been pleased to refer the dispute for adjudication by this Tribunal. In the circumstances, the union has prayed that the concerned workman be placed in clerical grade-I with effect from 17-8-1972 and paid other emoluments and consequential benefits.

4. In Rejoinder to the written statement of the sponsoring union, the management has asserted that the concerned workman was entitled to clerical Grade-II only from 1-10-72 as he started working in that capacity only from that date. The contention of the union that N.C.D.C. upgraded all the Accounts Clerks and placed them in clerical Grade-II to clerical Grade-I has been denied by the management. It has been stated that for the purpose of this case no comparison can be made between the NCDC employees and nationalised collieries. The N.C.D.C. employees were in second CPC pay scale prior to 15-8-67 and they were given Wage Board pay scale prior to 15-8-67. The management has also denied that some clerical employees junior to the concerned workman were placed in clerical grade-I over the head of the concerned workman. It has been specifically denied that Shiv Shankar Pandey and Tapeshwar Singh were allowed to work in the office or in the mine in 1973. There is no question of upgradation/regularisation of the concerned workman in clerical grade-I as canvassed by the union. The management has also denied and disputed that its action was arbitrary, unjustified and unreasonable.

5. The rejoinder to the written statement of the management, the sponsoring union has asserted that there is no provision for limitation in Industrial Disputes Act. The purpose of the Industrial Disputes Act is to provide equitable settlement by adjudication and the appropriate Government has rightly referred the instant dispute to this Tribunal for adjudication. The union has asserted that the management of C.C.L. while allowed clerical Grade-II to some other clerical staff with effect from 17-8-72 taking into account of their qualifications, experience etc. as the management has urged, the case of the concerned workman who was working as Accounts Clerk at the very initial stage of the take over of the said colliery by M/s. C.C. Ltd. was ignored or overlooked in the matter of fixation of his grade and scale of pay in Cle-

rical Grade-II. The union has submitted that the concerned workman is entitled for placement in Clerical Grade-I with retrospective effect from 17-8-1972.

6. The management, in order to justify its action has examined one witness, namely, G. P. Sinha, presently holding the post of Asstt. Chief Personnel Manager and laid in evidence a number of documents which have been marked Exts. M-1 to M-3.

On the other hand, the union has examined the concerned workman as WW-1 and laid in evidence some documents which have been marked Exts. W-1 to W-2.

7. The written statement of the management discloses that Dhori Colliery belonged to private coal company and that ownership of which was under dispute and this led to the management of the colliery being entrusted to a Receiver by the order of the Sub-Judge, Hazaribagh. This colliery was a coking coal mine and it was nationalised with effect from 1-5-1972. The Receiver appointed by the Sub-Judge refused to hand over Dhori Colliery to the Custodian of M/s. B.C.C. Ltd. and started litigation. But ultimately he was forced to hand over the colliery to M/s. B.C.C. Ltd. with effect from 17-8-72. The Central Government transferred the ownership of the colliery and other coking coal mines which were nationalised to M/s. B.C.C. Ltd. But subsequently by a notification of the Central Government, the ownership of this colliery and a few other neighbouring coking coal mines which were also nationalised were transferred to N.C.D.C. with effect from 17-8-72. The National Coal Development Corporation Ltd. was renamed as Central Coalfields Ltd. with effect from 1-11-75 following reorganisation of the Coal Industry in the Central Public Sector. These statements of facts have not been assailed or disputed by the sponsoring union. Besides MW-1 G. P. Sinha, presently holding the post of Asstt. Chief Personnel Manager, has vouched for these facts.

8. Admittedly, Prayag Mahttha, the concerned workman, joined the service of Dhori colliery on 1-1-69. Sri Mahttha in his testimony before this Tribunal, has stated that he joined Dhori colliery on 1-1-69 as Accounts Clerk. He has not been cross-examined on this point. The Bio-data provided by the concerned workman to the management discloses that on 17-8-72 he was working as Accounts Clerk and later he was allowed to work as Pay Clerk (Ext. M-1). This being the evidence I come to the conclusion that the concerned workman joined Dhori colliery as Accounts Clerk with effect from 1-1-69.

The management has stated in its written statement that the Receiver handed over the colliery to M/s. B.C.C.Ltd. on 17-8-72 and when N.C.D.C./C.C.Ltd. took over the colliery the clerks working there were assigned different duties and in the process the concerned workman was in Clerical Grade-III and allowed to continue to perform the same duties as before in clerical Grade-III. This statement of fact has not been denied. As a matter of fact the concerned workman was entrusted with the duties of clerical grade-II as Accounts Clerk and his basic pay was Rs. 180 per month. Then again, the case of the management is that the question of placing clerical workers in appropriate clerical grades were examined by the management through a Committee in 1974 and the concerned workman was placed in the post of clerical grade-II/L.D.C. with effect from 1-10-72.

M.W.1 G. P. Sinha was a member of the Committee. He has stated that the guidelines for the Committee Member were laid down by the General Manager. Sri B. Roy was the Manager of the colliery and he was also a member of the Committee. The guidelines of the Area General Manager disclose the following points :

- (a) Since the ownership of Dhori Colliery has been vested in N.C.D.C. as per Government order w.e.f. 17-8-72, the pay of the employees concerned for the purpose of fixation should be taken as on 17-8-72 only;
- (b) While fixing the pay of the employees it should be found out from the records, if available, as to from which date the employee concerned is holding the present post; and
- (c) The pay as recommended by the Committee should be implemented with effect from 17-8-72. (Ext. M-2). The report of the Committee (Ext. M-2) discloses that the concerned workman was working as Accounts Clerk and he was placed in Clerical Grade-II with effect from 1-10-72. The union has assailed the classification of the concerned workman as Grade-II Clerk and that too from 1-10-72.

9. MW-1 G. P. Sinha has stated generally seniority-cum-merit is the criteria for promotion, but not in all cases and that the instant case is not for promotion but fixation of pay and so the seniority was not the main criteria here. According to him, in the matter of fixation of pay qualification, merit and performance at the interview were taken into consideration. That apart, the Committee also considered all the criteria including the Wage Board Recommendations. There is not a whit of evidence to indicate that the concerned workman was not working as Accounts Clerk on 17-8-72. According to Wage Board Recommendations, Accounts Clerks are placed in Clerical Grade-II. There is no hard evidence to indicate that the concerned workman was not entitled to clerical Grade-II with effect from 17-8-72. But the Committee placed in the Clerical Grade-II with effect from 1-10-72. The Committee has not spelt out in any specific term as to why his case for fixation of pay was considered as from 1-10-72 while the definite direction of the Area General Manager was that fixation of pay should be taken as 17-8-72 and the recommendations of the Committee should be implemented with effect from 17-8-72. Hence, I hold that the management was totally unjustified in placing the concerned workman in clerical Grade-II with effect from 1-10-72. In my view, he should have been placed in that grade with effect from 17-8-72.

10. The sponsoring union has asserted that Anirudh Jha and Sadanand Jha and others who were originally in lower grade and scale of pay and junior to the concerned workman, were placed in clerical Grade-I with effect from 17-8-72 and in the process the management has discriminated the concerned workman. The concerned workman has stated that since Anirudh Jha and Sadanand Jha are junior to him in service and have been placed in clerical Grade-I with effect from 17-8-72, he has claimed clerical Grade-I with effect from that date with consequential benefits.

The contention of the union that both the Jhas were on a lower grade and scale of pay is not correct. It appears from Ext. M-2 that the concerned workman and the two Jhas were getting the same pay at the time when the Committee examined their cases. Then again, the union has contended that both the Jhas were junior to the concerned workman. The report of the Committee does not disclose the date of appointment of the two Jhas. But the concerned workman has referred to a notesheet purported to have been raised by Sri A. Ansari, Senior Personnel Officer of Dhori Colliery on 20-12-82 that the date of appointment of both the Jhas was 17-8-72. (Ext. W-2). But this document is not the original document. Besides, it does not disclose source of information on the basis of which Sri Ansari mentioned the date of appointment of these workman. Anyway, it appears from Ext. M-2 that both the Jhas were B.A.s while the concerned workman is matriculate. MW-1 G. P. Sinha has stated that in the matter of fixation of pay qualification, merit and performance at the interview were taken into consideration. In other words, these were the principal factors which were taken into consideration in the matter of fixation of pay. The report of the Committee was submitted way back in 1974. The concerned workman has stated that he submitted representation against fixation of his pay in clerical Grade-II but no such representation is forthcoming. Hence, there is no objective basis to hold that the Committee made a mistake in fixing the pay of the concerned workman in clerical Grade-II. But he should have been placed in that grade, as I have stated earlier, with effect from 17-8-72 and not from 1-10-72.

11. The written statement of the management discloses that the concerned workman was promoted to clerical Gr-I with effect from 15-3-86. The present dispute was raised by the sponsoring union sometime in 1987-88.

Shri R. S. Murthy, learned Advocate for the management, has contended that the dispute is over-stale. But I consider that fixation of pay and gradation is a live issue for salaried workers. In this view of the matter, the present reference cannot be rejected out right. But I regard being to the delay in raising the dispute. I consider that the concerned workman should be placed in clerical Grade-II with effect from 17-8-72 notionally without any financial benefits, but his seniority in service should be continued in Clerical Grade-II from that date.

12. Accordingly, the following award is rendered the action of the management of Dhori Colliery of Dhori Area of M/s Central Coalfields Ltd in refusing Clerical Grade-I to Prayag Mahtta is justified. But the management should put him in clerical Grade-II with effect from 17-8-72 notionally without any financial benefits and should consider his seniority in that grade with effect from that date.

In the circumstances of the case, I award no cost

S. K. MITRA, Presiding Officer